FILED

011254 FEB 2 - 2002

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, & COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Petitioner – In Pro -Per

136pp

QUESTIONS PRESENTED

1. Whether there is any constitutional recognizable preclusion at all under the Full Faith and Credit Statute 28 USCS §1738 to a State Small Claims default judgment when the State's Small Claims procedure did not satisfy the applicable requirements of the Due Process Clause of the Fourteenth Amendment. *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 482, 483 (1982)

2. Whether a federal court must consider pursuant to the full faith and credit statute 28 USCS §1738 the preclusion law of the state in which the prior judgment was rendered and whether the 9th Circuit's refusal to consider the principles of California's preclusion law by holding that a prior Small Claims judgment obtained by default, on a common law claim bars petitioner's state tort claims, and petitioner's subsequent Civil Rights claims, conflicts with the holding of this Court in *Migra vs Warren City School Dist. Bd. of Educ.*, U.S. 465 U.S. 75, 104 S.Ct. 892, 896 (1984), that "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered"? thus the procedure was not sufficient under the Due Process Clause of the Fourteenth Amendment, and did not satisfy the minimum procedural requirements

QUESTIONS PRESENTED

3. Whether the 9th Circuit's silent holding within the res judicata decision that the County Of Los Angeles Small Claims court was of competent jurisdiction to issue a Small Claims judgment when the court knew personal jurisdiction of the government defendant(s) was lacking, - conflicts with this court's explicit holding in *Bradley v Fisher* 80 U.S. (13 Wall.) 335 at 344, 20 L.Ed. 646 (1871) which states "It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, and if it have not, the judgment is void" And *Bradley* at 352 "Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible"

4 Whether the California Small Claims default judgment is void if the California Small Claims court did not have personal jurisdiction over the Government defendants, and if the procedure did not comply with the due process clause of the fourteenth amendment. *Burnham v. Superior Court Of California, County Of Marin* 495 U.S. 604, 609; 110 S. Ct. 2105; 1990; 109 L. Ed. 2d 631 (1990) Quoting *Case of the Marshalsea*, 10 Coke Rep. 68b, 77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612). At 1028 ""When a Court has jurisdiction of the cause, and proceeds inverso ordine or erroneously, no action lies against the party who sues, or the officer or minister of the Court, who executes the precept or process of the Court; when the Court has not jurisdiction of the cause, the whole proceeding is coram non judice [before someone who is not a judge], and an action will lie against them, without any regard to the precept or process" In *Pennoyer v. Neff*, 95 U.S. 714, 732 (1878), ... [The Supreme Court] announced that the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment as well..."

QUESTIONS PRESENTED

5. Whether the Small Claims court is entitled to judicial immunity?

6. Whether a State Small Claims court's dismissal of a common law action for failure to comply with the California Government Code claim requirement may preclude a subsequent Federal Civil Rights action between the same parties with new parties and new Federal Civil Rights claims that could not possibly have been sued upon in the first claim, because of the possibility that the plaintiff in the Federal Civil Rights action could previously have brought a Federal Civil Rights claim against the original defendants of the Small Claims action in a regular State Court (but did not), and when the Small Claims court provides for more limited relief than that which is provided by the Federal Civil Rights laws?

7. Whether there is an exception to 28 U.SCS.§ 1738 for Federal Civil rights claims under 42 USC§ 1983, §1985 (2) & (3), and claims under the continuing violation theory for Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. (Title IX), if these claims were not, or could not have been raised in the prior Small Claims lawsuit, but were subsequently raised in this Federal lawsuit, and if this exception to U.S.C § 1738 would give the State Court's Small Claims default judgment, a greater preclusive effect than would the courts of the state rendering the judgment

QUESTIONS PRESENTED

8 Whether it is one of the "accepted principles of res judicata" that no party may be precluded by a prior litigation from raising a claim that such party could not have raised in that prior litigation, due to the lack of subject matter jurisdiction of the first tribunal over the subsequent claim, and, if so, whether the Ninth Circuit's aforesaid claim preclusion holding for petitioner's State Tort Claims as well as petitioner's Civil Rights claims also conflicts with *Federated Department Stores v. Moitie*, 452 U.S. 394, 398-99 (1981)?

9. Whether 9th Circuit affirming the vexatious litigant order is in error, if the vexatious litigant label doesn't fit the vice encountered - failing to state a claim, required under *De Long v Hennessey* 912 F. 2d 1144, 1146-48 (9th Circuit 1990), and if the vexatious litigant label cannot be justified by petitioner having filed related case 9th Circuit No. 00-55524 (USDCCDC CV-99-10121-(JSL)(Mc) as oral argument was heard on Oct 15th 2001, and the decision is currently pending.

10. Whether the 9th Circuit court erred in implementing the extreme departure standard of review from *Steckman v Hart Brewing Inc* 143 F.3d 1293; 1998 (9th Circ. 1998), in reviewing a pro per Civil Rights litigant's complaint and Motions To Dismiss de novo, when Steckman is not the applicable standard of review for a pro - per civil rights case.

QUESTIONS PRESENTED

11. Whether the 9th Circuit decision that petitioner failed to prosecute her remaining claims is an error if petitioner stated a Municipal Violation under 42 USC 1983 & 1985 (2) & (3) against County Of Los Angeles respondents and applicable Santa Monica College et al respondents see *Monell vs Department of Social Services Of City Of New York* 436 US 658 98 S Ct 2018, 56, L.Ed. 2d 611, 1978, 253, 258, 259. *Pembaur v Cincinnati* 475 US 469 106 S Ct 1292, 89, L Ed 2d 452 (1986) and if these claims were dismissed for failing to State a Claim under a FRCP 12 (b) (6) motion for noncompliance with USDC Central District Of California Local Rules 7.6 and 7.9 which does not rise to the level of a failure to prosecute under FRCP 41(b) See *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 319-320, 101 L. Ed. 2d 285, 108 S. Ct. 2405 (1988) (Brennan, J. dissenting) *Carver v Bunch* , 946 F.2d 451; 453, 454, 455, (6th Circuit 1991) *Schilling v. Walworth County Park & Planning Commission*, 805 F.2d 272, 276-77 (7th Cir. 1986) *J.F. Edwards Const. Co. v. Anderson Safeway Guard Rail Corp.*, 542 F.2d 1318, 1323 n. 6 (7th Cir. 1976) ("Unless the violation of a local rule constitutes failure to prosecute, Rule 41 does not provide for dismissal for violation of a local rule.").

QUESTIONS PRESENTED

12. Whether the lower courts erred in dismissing the County Of Los Angeles Caucasian Doe Sheriffs Bailiffs of Judge Laurence D Rubin's Courtroom R for failing to serve them personally because when there is a primae facie case for false arrest without a valid warrant the burden of production shifts to the municipal entity to prove that there was probable cause for a warrantless arrest .and assault and battery - and if this holding to dismiss the County Of Los Angeles Caucasian Does because they were not served personally {See App B, page 13 (last paragraph), page 14] conflicts with *Bivens v Six Unknown Named Agents Of Federal Bureau Of Narcotics* 403 U.S. 388; 91 S. Ct. 1999; 29 L. Ed. 2d 619; 1971 U. S, and the 9th Circuit's more recent published holding in *Dubner v City of San Francisco* 266 F.3d 959; (9th Circuit Sept 2001) as well as with Maclin v.Paulson, 627 F.2d 83, 87 (7th Cir. 1980),Gordon v. Leeke, 574 F.2d 1147, 1152 (4th Cir. 1978)

13 Whether County Of Los Angeles respondents Terry January and Sherman Moten appeared in County Of Los Angeles Motion To Dismiss, if they were named in the proposed order [App F. Page 128-131] presented to the district court to sign.

13b And if so – whether defenses under a FRCP 12 (b) (6) motion can be waived under FRCP 12 (g) and (h) as the County Of Los Angeles Sheriffs could have raised the defenses of insufficiency of service of the summons and complaint and lack of personal jurisdiction at the time of their motion to dismiss but did not raise the defenses, and

QUESTIONS PRESENTED

13c Whether petitioner should be given due process to serve Sheriff Terry January and Sherman Moten personally under FRCP 4 (m). - If they did not appear in this case and if there are mitigating circumstances for failure to prosecute when they concealed a defect in the service of the summons & complaint which continued in their Motion To Dismiss proposed order. See (App F Page 129, 130, 131), & if the district court did not warn her that they must be served personally

14a Whether a school district may be held liable under Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. (Title IX), under the continuing violation theory see *Havens Reality Corp v Coleman* 455 U.S. 363 365(1982) for sexual harassment and discrimination, hostile environment and retaliations, when the claim is not based solely on one incident of a instructor sexual assault on a student in a class, but is challenging an unlawful practice of continuing violation sexual discrimination by the same school district instructor, and the unlawful practices of school district, to cover up the complaint when she reported it to them, and frame her which resulted in physical injury to petitioner in a County Of Los Angeles Courtroom on Oct 6th 1998.

QUESTIONS PRESENTED

14b. If a school district may be held liable under the continuing violation theory for damages under Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. - then whether School district police cover up of a sexual assault complaint and continuing a Small Claims proceeding and disseminating false testimony fabricated prior to the proceeding that resulted in police brutality, false arrest and unlawful detainment to the petitioner during the proceeding Oct 6th 1998 can be considered as an incident in the series of continuing violations constituting sexual discrimination, retaliation and hostile environment.

14c Whether the cumulative effect of all claims - stemming from, and including the sexual assault of 1994, may be included for purposes of the continuing violation - sexual harassment discrimination, retaliation and hostile educational environment claim under Title IX, see *Harris v Forklift Systems Inc*, 510 U.S. 17; 114 S. Ct. 367; 126 L. Ed. 2d 295; 1993 for damages purposes.

14d Whether a school district police officer investigator, should be regarded as a "School District Discrimination official" to fulfill the actual notice requirement of Title IX for a student to report a sexual assault complaint, and if not - whether constructive notice and respondeat superior should be permitted in a Title IX case whenever it is alleged that actual notice was given to a school district police officer? - see dissent *Gebser, v. Lago Vista Independent School District* 524 U.S. 274; 118 S. Ct. 1989; 141 L. Ed. 2d 277; (June 22nd 1998), which understood "an incentive for School Boards to insulate themselves from knowledge about sex discrimination in school programs" and if petitioner sustained physical injury on Oct 6th 1998 on account of a causal chain stemming from that incentive, and in order to eliminate the incentive & prevent victims of sex discrimination from a far greater risk of further injury if they do speak up, than if the Title IX right and remedy didn't exist at all.

PARTIES TO PROCEEDING

The Petitioner is Angela Bernhardt.

The Santa Monica College et al Respondents are - Santa Monica Community College District, Santa Monica College, Santa Monica College Police Department, Santa Monica College Board Of Trustees, , R. L. Jones, Ron Marable, O.D. Obiamiwe, Eileen Miller, Brenda Simmons, Piedad Robertson, Jo Ann Fielder, Robert Sammis, Herbert Roney, Dorothy Ehrhart - Morrison, Nancy Cattell-Luckenbach, Carole L. Curry, Patrick Nichelson, Annette Shamey.

The County Of Los Angeles et al respondents are - County Of Los Angeles, Los Angeles County Sheriff Department, Laurence D Rubin, 1-10 Caucasian Male Sheriff Deputy Does Of Judge Laurence D Rubin's Courtroom R & County Of Los Angeles Sheriff Department, Sherman Moten, Terry January, Leroy Baca, County Of Los Angeles Santa Monica Municipal Court. Does 1-100.

The State Of California.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ Of Certiorari issue to review the judgment of the United States Court Of Appeals for the Ninth Circuit filed June 25th 2001.

OPINION BELOW

The opinions of the United States Court of Appeals For The Ninth Circuit and of the District Court are unreported and are attached as Appendix A, and Appendix B respectively. The California Small Claim and default judgment to be reviewed in conjunction with the Ninth Circuit decision regarding res-judicata - is attached as Appendix C, and is an unpublished decision.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on June 25th, 2001. A timely petition for rehearing en banc was denied on Oct 5th 2001 and a copy appears in Appendix E. An extension of time to file the petition for writ of certiorari was granted by this court on 19th Dec 2001 to and including the 2nd February 2002 in Application No. 01A450.. This court's jurisdiction is invoked under 28 U.S.C. §1254(1).

RELATED CASE

There is a related case - 9th Circuit United States Court Of Appeals case # 00-55524 [USDC Central District Of California CV-99-10121-JSL (Mc) Angela Bernhardt, Appellant vs County Of Los Angeles, & L.W. Pellman, appellees. Oral argument was heard on Oct 15th 2001 in Pasadena, California and the decision is pending.

STATUTORY PROVISIONS

All Statutory Provisions below appear in full in Appendix G Page 56 to 83.

28 U.S.C § 1738 State and Territorial Statutes and Judicial Proceedings: Full Faith And Credit.

Title IX Of The Education Amendments Of 1972, 86 Stat. 373, As Amended, 20 U.S.C. §1681 Et Seq (a) Prohibition against Discrimination,

42 U.S.C §1983 Civil Action For Deprivation Of Rights,

42 U.S.C§1985(2) Obstructing Justice: Intimidating Party Witness, or Juror.,

42 U.S.C.§1985(3). Depriving Persons Of Rights Or Privileges.

42 U.S.C §2000d - §2000d7.

§ 718 Of The Education Amendments Of 1972

42 U.S.C §1988 (b) Attorneys Fees.

Fourth, Amendment

Seventh Amendment - In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Fourteenth Amendment

Federal Rules Of Civil Procedure

FRCP 4 (d), FRCP 4 (m), FRCP 11, FRCP 12 ,
FRCP 12 (b) (2), FRCP 12 (b) (5), FRCP 12 (b) (6)
FRCP 12 (e), FRCP 12 (g) & (h), FRCP 15 (a),(c)(d))
FRCP 16

United States District Court Central District Of California

Local Rule 7.3.2, Local Rule 7.3.3, Local Rule 7.6,
Local Rule 7.9, Local Rule 27 (A)

California Code Of Civil Procedure

§116.210, §116.220 Jurisdiction Of The Small Claims Court
§116.710 (a) The Plaintiff in a Small Claims action shall have no right to appeal the judgment on the plaintiffs claim...
§415.30 (a) & (b)

California Government Code

§905.2, §905.4, §911.2, §911.3 (a) & (b), §911.4 (a), §911.6 (a)

Articles Of The United States Constitution

Article. IV. Section 1. Interstate Relations and the Official Acts of States

Article. IV. Section 2. Clause 1 Interstate Relations and The Rights of Citizens

Article. VI. Clause 2 General Provisions: The Supreme Law

STATEMENT OF THE CASE

Santa Monica College School District instructor R.L. Jones sexually assaulted petitioner in his class in June 1994 by surprising her from behind, and restricted her escape from the assault by pinning her to a color filter table. This behavior was unwelcome and upon hearing sexual innuendo from the same instructor the following day petitioner informed the instructor to not sexually assault her again.

Petitiner was subjected to continuing violations by the same instructor, that formed a pattern unified in purpose and effect to dominate, restrict, and humiliate the petitioner, (see First Amended Complaint in Volume II App F, Page 28,& Page 29) and which revealed no innocent explanation over time.

The continuing violations had an added component of defamation of character and so this case bears a similarity to quid pro quo sexual harassment, where an employee or supervisor uses his or her superior position to extract sexual favors from a subordinate employee, and if denied those favors, retaliates by taking action adversely affecting the subordinate's employment. See, e.g., *Lipsett v. Univ. of Puerto Rico*, 864 F.2d 881, 897 (1st Cir. 1988)

The cumulative effect of the sexual and non sexual violations caused the petitioner to drop photography classes and leave the photography department as the instructor was the Chief Supervisor of that department. [See Excerpt from the police report App F, 107 dated Nov 25th 1996]

After removing herself from the instructor's department petitioner upon finding instructor R.L. Jones was still defaming her character to the school district police in Nov 1996 reported all violations to the Santa Monica College school district police officer investigator Ron Marable in November 1996.

Ron Marable thoroughly interrogated petitioner about the sexual assault to ensure it was sexual assault she was reporting but refused to record petitioner's sexual assault complaint in writing by saying the sexual assault complaint was too old to report and passed off the continuing violation of defamation by the school district instructor against petitioner by stating that the school district teacher was "just joking!"

In March 1998 petitioner found that the police officer Ron Marable had covered up petitioner's sexual assault complaint against the instructor by saying that she had never made the sexual assault complaint to him, after retaliations had occured.

When petitioner reported the sexual assault and discrimination for the second time to the school district discrimination officials, they purposely distorted and omitted petitioner's facts in their sexual assault investigation report – and omitted violations that had continued in order to support that the school district teacher had not sexually assaulted or discriminated against petitioner. See Volume II App F, page 122, 123, 124, which shows how petitioner's facts were distorted by the School District Officials.

The continuing incidents of sexual discrimination although non sexual - were intimately tied to the instructor's original sexual assault in the controlling, restricting and humiliating purpose and effect.

So by Santa Monica Community College District excluding the continuing violations from their sexual discrimination investigation an invalid conclusion was reached, (reproduced in App D 46) from their invalid premise which states "A one (1) time occurrence of an action, where the individual was put on notice about the incident does not constitute harassment:"

When petitioner arranged a meeting with the Santa Monica College School District Superintendent and Head of Human Resources in August 1998, to inform

them in person regarding the school district police cover up of petitioner's sexual assault complaint instead of responding the School Distrct Officials threatened petitioner with the school district police instead, and refused to investigate the school district police officer for police misconduct. This incident occurred in late Aug 1998, after *Gebser, v. Lago Vista Independent School District* 524 U.S. 274; 118 S. Ct. 1989; 141 L. Ed. 2d 277; (June 22nd 1998) where Justice Stevens for the dissent stated "The reason why the common law imposes liability on the principal in such circumstances is the same as the reason why Congress included the prohibition against discrimination on the basis of sex in Title IX: to induce school boards to adopt and enforce practices that will minimize the danger that vulnerable students will be exposed to such odious behavior. The rule that the Court has crafted [in *Gebser*] creates the opposite incentive. As long as school boards can insulate themselves from knowledge about this sort of conduct, they can claim immunity from damages liability"

On Oct 6th 1998 School District Police Officer Marable arrived alone in County Of Los Angeles Small Claims proceeding to give false evidence which he had begun to manufacture prior to the proceeding in Nov 1996 by failing to take the sexual assault complaint down in writing, and by March 17th 1998 completely covering up that petitioner had made a sexual assault complaint to him regarding the school district instructor.

In similar cases pertaining to false evidence that the police officer witness had helped to manufacture the United States Courts Of Appeals for 6th and 9th Circuit have reversed, see *Paine v. City Of Lompoc*, 265 F.3d 975; (9th Circ Sept 13th 2001) (CV-96-09037-JSL. J. Spencer Letts, District Judge, Presiding) *Spurlock v. Satterfield*, 167 F.3d 995 (6th Cir. 1999) the courts have emphatically refused to extend absolute witness immunity to false evidence that the police officer witness had helped to manufacture. To the contrary, wrote the Spurlock court,

"the simple fact that acts may ultimately lead to witness testimony does not serve to cloak them with absolute testimonial immunity." **"Allowing witnesses to so launder their non-testimonial activities through their testimony would transform the immunity from "a shield to ensure that those individuals intimately involved in the judicial process are able to carry out their responsibilities without the constant threat of vexatious lawsuits" into a" sword allowing them to trample the statutory and constitutional rights of others." Id. at 1003-04. "**

Petitioner's complaint is also that certain Santa Monica College respondents, conspired with County Of Los Angeles respondents to conduct an abridged hearing in County Of Los Angeles Small Claims court to not give petitioner due process of law on the California government Code claim requirement under § 905.2 et seq, to deliberately continue the proceeding to achieve this end, so that petitioner's Small Claim of "Emotional Injury due to police cover up of a sexual assault complaint...defamation...negligence" would not be heard on the merits ever because a California Small Claims plaintiff is not able to appeal under (California CCP §116.710 (a)), - and so that the Small Claims proceeding could serve as a conduit to transform the California Government Code Claim defense into the more permanent res judicata defense –which up to now has been used to block petitioner's Civil Rights claims, and so that the proceeding could also be used as a venue to intimidate petitioner from bringing any a subsequent civil rights lawsuit through police brutality and false arrest without a valid warrant.

A conspiracy to conduct an unfair Small Claims hearing can be inferred from the facts of this case because the School District police officer would have not had any reason to continue the Small Claims proceeding knowing that the California Government Code Claim § 900 et seq had not been complied with, - unless he knew in advance

that the County Of Los Angeles court would not give the petitioner due process of law on the California government claim requirement, (petitioner was not aware that the government claim requirement was necessary as the requirement is not made clear for a school district.) and so the school district police officer would have had no reason to continue the Small Claims process by not raising the California Government Code Claim defense at the beginning of the proceeding, unless he and the other school district defendants who did not appear had something to gain in continuing the process in this way.

To conclude petitioner was sexually assaulted and exposed to continuing sexual discrimination by a school district instructor, and upon discovering a pattern of ongoing abuse, reported it to the school district police in Nov 1996, but the school district police refused to record her continuing violation sexual discrimination complaint and by March 1998 had completely covered it up. The School district Discrimination Officials ratified these acts and used the school district police cover up to deny that continuing violation sexual discrimination had occurred when the petitioner reported her complaint for the second time, The ratification of the ongoing sexual discrimination, and the school district police cover up of her complaint, placed petitioner at a heightened risk for greater violence to occur to her in County Of Los Angeles Court on October 6th 1998.

In addition the California law regarding the jurisdiction of the County Of Los Angeles Small Claims court, at California Code Of Civil Procedure § 116.220. (a) 4 (e) & (f) See (App. G page 79, 80) which is the procedure she received even though not applicable to her, in which the judicial officer's discretion in § 116.220 (a) (4) (f) was to dismiss the action without an opportunity to provide timely proof on the California Government Code Claim requirement. This California policy allows Small Claims to be dismissed against California government defendants without due process of law. Because a Small

Claims Plaintiff has no right of appeal under California Code Of Civil Procedure § 116.710 (a). In addition in Santa Monica County Of Los Angeles Court the policy is supplemented by assaulting and battering the Small Claims Plaintiff, and false arrest without a valid warrant.

PROCEDURAL POSTURE

On 3/15/99 petitioner in pro per filed a Federal Civil Rights complaint. Santa Monica College (SMC) filed a Motion To Quash & then a Motion To Dismiss & took it off calendar after 12th May 99. County Of Los Angeles did not file a Motion To Dismiss until Aug 25th 1999 a month before the district court dismissed the case under a FRCP 12 (b) (6) Motion with prejudice and without leave to amend. On 12th May 99 at the informal status conference the Court et al agreed that petitioner could amend the complaint, but gave no time frame, & did not apprise petitioner of what was deficient. The County Of Los Angeles attorney informed petitioner that all County named respondents had accepted service of the summons and complaint by U.S. mail. On 4th June 1999 the district court denied petitioner's request to request an attorney for her & by 6/29/99 had denied petitioner's motions for time to amend her complaint & supplement her complaint with a claim against the County Of Los Angeles Settlement policy –9th #00-55524 pending in 9th Circuit. On July 6th 1999 the First Amended Complaint was accepted,even though the time to file it 8 days earlier had been cut off without warning. [See Appendix B Transcript page 28] The minutes for the informal conference shows that petitioner in pro per was not given a time frame for amending her complaint. [App. B, 37] On 21st Sept 1999 the petitioner filed an ex parte application & asked for a continuance on the Motion To dismiss hearing, which two motions had arrived by 10th Sept 1999. The Continuance was denied by phone on 24th Sept 2001, and by 29th Sept the district court had granted two motions to dismiss. On Oct 4th 1999 two oppositions to County and SMC's two

motions to dismiss were filed in one blue back. On Oct 13th 1999 the Court added in his order - with prejudice and without leave to amend, [Appendix B page 22- 26] The Court did not refer to petitioner's opposition to County Of LA's Motion To Dismiss at [App F, page 144-169] in Motion To Dismiss order, but did mention opposition to SMC's Motion To Dismiss. On 22nd Oct 1999 petitioner filed an appeal which was dismissed on 25th Jan 2000 for lack of jurisdiction. On 29th Februàry 2000 an order was entered dismissing remaining defendants for lack of prosecution [Appendix B page 11-15], but the court's prior order to show cause re lack of prosecution did not warn defendants must be served personally. On May 1st 2000 the district court entered a vexatious litigant order against petitioner[Appendix B page 5-9] with out giving her the details or giving her due process before he entered the order.

REASON FOR GRANTING THE WRIT

This case raises a significant, recurring problems with respect to the preclusive effect of a state-court judgment vis-a-vis the protection of constitutional rights.

The question before this Court may be stated as follows: Is petitioner precluded from litigating her Civil Rights Claims in the federal court simply because of a California Small Claims default judgment[1] attached at [App. C, page 40 through 45] for the common law claim of "emotional injury due to police cover up of a sexual assault complaint by a College instructor, defamation, and negligence" where the California State's Small Claims procedure did not satisfy the applicable requirements of the Due Process Clause of the Fourteenth Amendment.

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[1]Note: The Small Claims judgment was a default judgment as the California Government Code Claim defense under § 905.2, et seq [App G, 80 through 82] was not met on October 6th 1998 but was timely met in Dec 1998 and Jan 1999, See [Volume II, Appendix F page 99 through 106].

ARGUMENT
1.

1. There is no constitutional recognizable preclusion at all under the Full Faith and Credit Statute 28 USCS §1738 to a State Small Claims default judgment when the State's Small Claims procedure did not satisfy the applicable requirements of the Due Process Clause of the Fourteenth Amendment.

The procedure from California Code Of Civil Procedure §116.220 (f) does not comply with the due process clause of the Fourteenth Amendment as it gives the California Small Claims court discretion to dismiss an action without fully or fairly litigating it, without due process of law - without opportunity to provide proof of the California Government Claim requirement under § 905.2 et seq. when it could be timely fulfilled, and prevents the Small Claims plaintiff from ever having her day in court where she could prevail, as there is no appeal for a Small Claims plaintiff, under California law.

In *Kremer v Chemical Construction Corp* 456 U.S. 461, 482, 483 (1982) it was held that procedures provided in New York for the determination of employment discrimination claims, complemented by administrative as well as judicial review, offered a full and fair opportunity to litigate the merits and thus were sufficient under the Due Process Clause of the Fourteenth Amendment.

But unlike ***Kremer v. Chemical Construction Corp.***, 456 U.S. 461, 482, 483 (1982) the prior State Small Claim was not a sexual discrimination claim under Title IX, Instead the Small Claim was "emotional injury due to police cover up of a sexual assault complaint, defamation and negligence" which wasn't fully or fairly heard in the Small Claims court as the California

Government Code Claim was raised by the defendant which curtailed the proceeding, and there was no judicial review permitted.

Thus the Los Angeles County Small Claims procedure was insufficient under the Due Process Clause of the Fourteenth Amendment, and the *Kremer* court stated, "A State may not grant preclusive effect in its own courts to a constitutionally infirm judgment, and other state and federal courts are not required to accord full faith and credit to such a judgment. Section 1738 does not suggest otherwise; other state and federal courts would still be providing a state court judgment with the "same" preclusive effect as the courts of the State from which the judgment emerged. **In such a case, there could be no constitutionally recognizable preclusion at all**" *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 483 (1982)

ARGUMENT

2.

1. The California Small Claims Default Judgment Was Not Given The Same Full Faith And Credit under 28 U.S.C. § 1738 As The Judgment Would Receive In California, The State From Which The Judgment Emerged.

The Lower Courts have not given the same "Full Faith And Credit" to a Small Claims Court judgment as would the courts from the state in which the judgment is rendered which in this case is California. The district court never explicitly ruled on the issue of res judicata or collateral estoppel and the 9th Circuit gave no citation for for their decision that the State Tort Claims against Santa Monica College et al were res judicata and so did not look to California law. The Ninth Circuit ignored the teachings of this Court in *Allen v. McCurry*, 449 U.S. 90 (1980), *Kremer v. Chemical Construction* Corp., 456 U.S. 461 (1982), and *Haring v. Prosise*, 462 U.S. 306, 76

L.Ed. 2d 595, 103 S.Ct. 2368 (1983), concerning the preclusion law to be applied by the federal courts to previous state court judgments under 28 U.S.C. § 1738, the Full Faith and Credit Statute. It also ignored fundamental principles of comity and federalism, partially embodied in that statute, by in effect punishing the petitioner for having brought their state common law claims in a state Small Claims court forum. *Younger v. Harris*, 401 U.S. 37, 44 (1971).by granting the previous California Small Claim default judgment against this petitioner greater preclusive effect in federal court than that judgment would have in the courts of California

See the Small Claim and judgment at (App. C page 40-45) The Ninth Circuit refused to apply the rule of Allen, Kremer and Haring.. This Court's decision in *Migra vs Warren City School Dist. Bd. of Educ.*, U.S. 465 U.S. 75, 104 S.Ct. 892, 896 (1984) which applied the rule of those decisions, a few years ago removed any possible doubt that the Ninth Circuit's recent decision in this case was in error. The court below clearly misconstrued the statutory mandate of section 1738, which is to grant state court judgments the "same" preclusive effect in "every court within the United States . as they have by law or usage in the Courts of [the] state . from which they are taken." 28 U.S.C. § 1738 (1976). In *Kremer*, the Court lruled that: "It has long been established that [28 U.S.C.] §1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken." (Kremer v. Chemical Construction Corp., 456 U.S. 461, 481-82) (emphasis supplied)

Allen and Kremer involved major federal civil rights statutes that had previously been held to require special limitations upon the preclusive effect of state court judgments. The fact that no such limitations were allowed by this Court, even in those cases, demonstrates

that there could be few, if any, federal statutes that would require the expansion of the preclusive effect of such judgments. If even the civil rights laws could not effect the "partial repeal" of section 1738 so as to allow a federal claim (Kremer v. Chemical Construction Corp., supra, 456 U.S. at 468), then what law, much less, novel judicial policy, could accomplish a "partial repeal" so as to preclude a federal claim, especially one which could only be brought in federal court? Thus, in *Folsom Inv. Co., Inc. v. Moore,* 631 F.2d 1032, 1035 (5th Cir. 1982), the Fifth Circuit immediately drew this deduction from the language just quoted: "Kremer apparently dooms the assumption of many courts and commentators that federal courts may be free to grant greater preclusive effect to state court judgments than would the courts of the judgment-rendering state." Accordingly, With The exception of the present case & *Marrese v. American Academy Of Ortho. Surgeons,* 470 U.S. 373 (1985) had problems also, virtually every federal circuit court decision since Kremer that has construed section 1738 has recognized, at least implicitly, that the federal courts are not free to use a previous state court judgment to preclude an issue or a claim that would not have been precluded by the law of the judgment-rendering state.

In this case, the record is clear and unequivocal that the petitioner did not submit her §1983 & §1985 claims, or Title IX constitutional claims, to the state Small Claims court for determination, see App C, page 41 under Plaintiff's Claim, the Small Claim "emotional injury due to police cover up of a sexual assault complaint by an instructor, defamation and negligence did not contain any Federal Civil Rights claims.. The crux of the *Allen v. McCurry* decision is that McCurry had properly and fully litigated his federal claim in the state court. But in petitioner's case she did not even have a full or fair opportunity to litigate in the Small claims court see App F , Page 46, 47, 52, 53, 56, 57, 58, 83, 84, 85, 86, The First

Amended Complaint, and she was traumatized in the process.

According to the traditional doctrines of preclusion, res judicata does not apply when the subsequent suit is on a different cause of action. It is beyond dispute that the causes of actions asserted in the federal court is clearly different from the cause of action for 'Emotional injury due to police cover up of a sexual assault complaint, defamation and negligence",.

This Court in McCurry accorded a binding effect to the state court judgment because that court actually and properly adjudicated the federal constitutional issue which McCurry sought to relitigate in connection with a civil rights action subsequently filed by him in the federal court. In fact, McCurry requested the determination of the federal issue by the state court. The significant term used by the courts is "relitigate." Before the concept of " collateral estoppel" may be applicable, the point of law or of fact drawn in question in a subsequent suit must have been actually and fully litigated in the prior action.. The petitioner did not submit Federal Civil Rights claims to the state Small Claims court in the prior action between the parties; and, therefore, is not confronted in the instant case with a situation in which the state court decided a federal question adversely to her. Obviously, no preclusive effect arises where federal rights have not been presented to the state court for adjudication. The Ninth Circuit has committed prejudicial error in affirming the decision of the district court which barred the petitioner from litigating her Civil Rights claims in the federal court.

RES JUDICATA IS NOT APPLICABLE BECAUSE THERE ARE DIFFERENT PARTIES

The issue of sexual assault by the instructor was never presented to the Small Claims court See App C page 45 for a list of the parties where the school district instructor was not listed in the Small Claim. Nor were any of the County Of Los Angeles et al parties or the

causes of action that pertain to them listed in the Small Claim.

CALIFORNIA PRECLUSION LAW

In *Sanderson v. Niemann* 17 Cal. 2d 563, 573-575 [110 P.2d 1025] (1941) California law established that Small claims judgments are not entitled to collateral estoppel effect, given informality of proceedings, including limited right to judicial review.

California preclusion law encompasses primary rights see Los Angeles Branch NAACP v. Los Angeles Unified School District et al., 750 F.2d 731; (9th Circuit 1984) California follows the "primary rights" theory, under which the right sought to be enforced determines the cause of action. See 3 Witkin, California Procedure, Pleadings @ 22 (1971). The invasion of more than one primary right gives rise to as many causes of action as rights violated, even though all may arise from a single set of facts.See, e.g., Sawyer v. First City Financial Corp., 124 Cal. App. 3d 390, 399, 177 Cal. Rptr. 398, 403 (1981)...Agarwal v. Johnson, 25 Cal. 3d 932, 954, 160 Cal. Rptr. 141, 155, 603 P.2d 58, 72 (1979).

In addition Restatement Of Judgments Second 27e a default judgment obtained in Small Claims Court because a precondition to suit was not met, cannot be used as a collateral estoppel because the element of litigated issues is absent - "In the case of a judgment entered by by confession, consent or default, none of the issues is actually litigated.

ARGUMENT
3

Res Judicata Does Not Apply Because The Small Claims Court was not of Competent Jurisdiction To hear either the Small Claim on Oct 6th 1998, or the subsequent Federal Civil rights Claims.

Lack Of Jurisdiction Over Small Claim

In this case California Civil Code Of Procedure § 116.220 4 states at (e) "the Small Claims Court shall have jurisdiction over a (government) defendant only if the plaintiff has ... compliance with Sections 905.2 and 905.4 of the Government Code", and the requirement had not been complied with at the time of the proceeding on Oct 6th 1998.

In this case the Government defendant raised the California Government Code Claim requirement under § 905.2 et seq as a defense during the proceeding which curtailed and ended the proceeding.

In this case the Small Claims court made no inquiry whether the California Government Code Claim requirement under § 905.2 et seq could be timely met prior to entry of the Small Claims judgment, when it could have been met, and was subsequently met [App F page 99 –106), and where there is no appeal for the Small Claims plaintiff under California CCP § 116.710 (a)

Bradley v Fisher 80 U.S. (13 Wall.) 335 at 344, 20 L.Ed. 646 (1871) states "It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, and if it have not, the judgment is void"

Lack Of Jurisdiction Over The Subsequent Federal Civil Rights Claims Not Raised In The Small Claim

Prior jurisdictional competency is a requirement for the application of res judicata. This is a rule of near universal application. See Restatement (Second) of Judgments § 26(1)(c). Petitioner is not attempting to relitigate a federal claim which has been fully and directly litigated in another court of competent jurisdiction. A court may not consider and adjudicate a claim unless that claim has been submitted to it by means of proper pleadings according to established judicial rules of procedure and practice. The character of a cause of action is determined by the allegations contained in the complaint. And petitioner's Small Claim at [App C Page 41] is "emotional injury due to police cover up of a sexual assault complaint against a college instructor, defamation and negligence Also it is not unusual for one particular set of operative facts to give rise to different actions. There can be no contention of relitigation" or "adjudication" where a claim has not been asserted, and properly litigated in a court of competent jurisdiction.

Petitioner's Federal complaint of civil rights violations are broader than the common-law tort of defamation and emotional injury due to school district police cover up of a sexual assault complaint by a school district instructor. The appropriate and effective response to the rationale of the lower courts in this case is to be found in the concurring opinion of Justice Harlan in *Monroe v. Pape*, 365 U.S. 167, wherein he declared: ... a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right, and, therefore, deserves a different remedy even though the same act may constitute a state tort and the deprivation of a constitutional right.

Justice Harlan, in *Pape*, stated further: It would indeed be the purest coincidence if the state remedies for violations of common law rights by private citizens were fully appropriate to redress those injuries which only a

state official can cause and against which the Constitution provides protection.

Also it appears that the California Small Claims court does not have jurisdiction over Civil Rights claims – See California Code Of Civil Procedure §116.220 (a) (1) through (4) (f) [See App G page 78 through 80] which Federal Civil Rights Claims were not raised in the Small Claim [See Appendix C].

Eichman v Fotomat Corp 759 F.2d 1434; 1438 (9th Circ 1985) states "Under California preclusion law, in order for res judicata to apply to claims not raised in previous proceedings, the court rendering the prior judgment must have had jurisdiction to hear such claims. See *Teitelbaum Furs, Inc. v. Dominion Ins. Co.*, 58 Cal. 2d 601, 604, 375 P.2d 439, 440, 25 Cal. Rptr. 559, 560 (1962), cert. denied, 372 U.S. 966, 10 L. Ed. 2d 130, 83 S. Ct. 1091 (1963);

County Of Ventura, V. Joyce Tillett, 132 Cal. App. 3d 767; (1982) A judgment is void on its face if the court which rendered the judgment lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant. (*Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 493 [165 Cal.Rptr. 825, 612 P.2d 915]

ARGUMENT
4

The Small Claims judgment is void because the Small claims court did not have any personal jurisdiction over the government defendants and there was not a full or fair opportunity to litigate in the Small claim

Case of the Marshalsea, 10 Coke Rep. 68b, 77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612). At 1028

"When a Court has jurisdiction of the cause, and proceeds inverso ordine or erroneously, no action lies against the party who sues, or the officer or minister of the Court, who executes the precept or process of the Court; but when the Court has not jurisdiction of the cause, the whole proceeding is [before a person who is not a judge] coram non judice, and an action will lie against them, without any regard to the precept or process"

Pennoyer v. Neff, 95 U.S. 714, 732 (1878), ... [The Supreme Court] announced that the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment as well..."

ARGUMENT
5

The Small claims court is not entitled to Judicial Immunity.

Clear Absence Of Jurisdiction

In this case the Small Claims court entered a judgment for the Government defendants knowing that the California Government Claim requirement under §905.2 was not met, and made no inquiry to the plaintiff whether the requirement could be timely met, when it could be met, and was met after see [App F, page 99-106] and where there is no appeal for a Small Claims plaintiff. underCalifornia CCP § 116.710 (a) See [App G page 80].

Non Judicial Acts

The Small Claims Court also did not attempt to stop the County Of Los Angeles Caucasian Sheriffs Bailiffs from assaulting and battering the Small Claims plaintiff and falsely arrest her, in a battery ritual in the courtroom in which the defendant was permitted to join in [App F page 84-86].

The Small Court has since at Appeal defamed petitioner's character by stating that she lunged at him, See County Of Los Angeles briefs at 9th Circuit [App. F. page 175-176] and also has joined to suppress and switch the identities of the Sheriff bailiffs involved in assault and battery of petitioner in County Of Los Angeles Santa Monica Courtroom R.

In *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978), it was established that state judges are immune from § 1983 liability for "judicial" acts not taken "in the "clear absence of all jurisdiction. but this court did not explicitly consider whether Stump acted in the clear absence of personal jurisdiction or whether such action would be protected by judicial immunity. Two factors were considered in determining whether an act is "judicial": "the nature of the act itself, i. e., whether it is a function normally performed by a judge, and ... the expectations of the parties, i. e., whether they dealt with the judge in his judicial capacity." 435 U.S. at 362, 98 S. Ct. at 1107. Also the underlying purpose of judicial immunity should be considered. Gregory v. Thompson, 500 F.2d 59, 63 (9th Cir. 1974). n8

This case is distinct from *Stump v Sparkman* Stump v. Sparkman, 435 U.S. at 356, 98 S. Ct. at 1104. in that petitioner raised her issue with judicial acts in her First Amended Complaint and in the Opposition To County Of Los Angeles Motion To Dismiss [App F page 144-169] which is in the record even though the district court declined mentioning it. Also the issue of judicial immunity was only raised in the County Of Los Angeles

Motion To Dismiss filed in the district court on 25th Aug 1999, and so the judicial immunity issue was only raised AFTER the district court had denied any further amendment to petitioner's complaint on June 29th 1999. and so the district court denied her amending her complaints before the issue of judicial immunity was presented to her.

In this case the Small Claims court acted in the clear absence of jurisdiction over the defendants and knew that personal jurisdiction over the defendants was lacking when the Small Claims court entered the Small Claims judgment. See California Code Of Civil Procedure 116.220 (e) [App. G. Page 79] which states "the Small Claims Court shall have jurisdiction over the defendant only if ...compliance with the Sections 905.2, and 905. 4 of the Government Code. And the government Code Requirement had not been complied with see App C 41, point number 2. So the judgment should be declared declared nul and void.

ARGUMENT

7

There is no exception to 28 U.SCS.§ 1738 for Federal Civil rights claims under 42 USC§ 1983, §1985 (2) & (3), and claims under the continuing violation theory for Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. (Title IX), when these claims were not, or could not have been raised in the prior Small Claims lawsuit, but were subsequently raised in this Federal lawsuit.

It is well established that, in a suit under 42 U.S.C § 1983, and Title VII, 28 U.S.C. § 1738 requires federal courts give the same "full faith and credit" to the records and judicial proceedings of any state court that they would receive in the state from which they arise. See *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S.

75, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1984); which must follow also for suits under 42 USC 1985 (2) & (3) and Title IX Of The Education Amendments Of 1972, 86 Stat. 373, As Amended, 20 U.S.C. § 1681 Et Seq (a) Prohibition against Discrimination,

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ARGUMENT

8

It is one of the "accepted principles of res judicata" that no party may be precluded by a prior litigation from raising a claim that such party could not have raised in that prior litigation, due to the lack of subject matter jurisdiction of the first tribunal over the subsequent claim, and, so, Ninth Circuit's aforesaid claim preclusion holding for petitioner's State Tort Claims as well as petitioner's Civil Rights claims also conflicts with *Federated Department Stores v. Moitie*, 452 U.S. 394, 398-99 (1981)?

There are claims that did not exist when the Small claim was filed on Sept 2nd 1998 and which subsequent claims did not occur or accrue until the day the judgment was entered Oct 6th 1998 and after, and so could not possibly have been sued upon in the Small Claim heard on Oct 6th 1998, and also because the court would not have been of competent jurisdiction to hear those claims as he was a party to the new causes of action that occurred or accrued on Oct 6th and after.

The doctrine of res judicata can operate as a bar only in a situation where the subsequent suit between the parties or their privies is on the same cause of action. In this case the subsequent Federal Civil Rights Lawsuit suit are not on the same causes of action although police cover up of petitioner's sexual assault complaint is one of the many issues.

Unless the subsequent suit is predicated on the same claim or cause of action as that of the earlier suit,

res judicata can have no application, whatsoever. However, where the subsequent cause of action or claim is not the same, but there is an identity of parties, a point of law or a fact which was fully and fairly litigated, may not be drawn in question in the subsequent suit. In this case petitioner has asserted that the state Small Claims court denied her a "full and fair opportunity" to litigate her claims

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ARGUMENT
9

The vexatious litigant label doesn't fit the vice encountered failing to state a claim, See criteria that the 9th Circuit used under *De Long v Hennessey* 912 F. 2d 1144, 1146-48 (9th Circuit 1990), nor did the district court give petitioner due process of law under F.R.C.P. 11 ((b) because the district court did not describe the specific conduct that appears to violate subdivision (b) before the court entered the order, without a hearing, and the vexatious litigant stigma cannot apply to related Case 9th Circuit United States Court Of Appeals case # 00-55524 [USDC Central District Of California CV-99-10121-JSL (Mc) as oral argument was heard on Oct 15th 2001 and a decision is pending

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ARGUMENT
10

The 9th Circuit court used an inapplicable standard of review from *Steckman v Hart Brewing Inc* 143 F.3d 1293; 1998 (9th Circ1998), to review a pro per Civil Rights litigant's complaint and Motions To Dismiss de novo.

In order for petitioner's complaint to be dismissed for failure to state a claim, a court must conclude "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle ...[her] to relief."

Haines v. Kerner, 404 U.S. 519, 521, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972) (per curiam) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)). The lower court's should have accepted petitioner's allegations as true on a Motion To Dismiss, *Hishon v. King & Spalding*, 467 U.S. 69 at 73 (1984)

The 9th Circuit's general rule is also that a pro per litigant in civil rights cases are allowed to amend their pleadings See *Chang v. Chen, 80 F.3d 1293, 1296 (9th Cir. 1996).* As long as amendment would not be futile and this court has instructed the federal courts to liberally construe the `inartful pleading' of pro se litigants," *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) (citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)), which is "particularly important in civil rights cases." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 And if the district court did not give a pro se civil rights litigant a statement of the complaint's deficiencies before dismissing the complaint under a FRCP 12 (b((6) Motion For Failing To State A Claim. *Eldridge v Block* (9th Circ. 1987) 832 F.2d. 1132, 1135-1136.

ARGUMENT 11

The 9th Circuit decision that petitioner failed to prosecute her remaining claims is an error.

Petitioner has stated a Municipal Violation under 42 USC 1983 & 1985 (2) & (3) against respondents see *Monell vs Department of Social Services Of City Of New York* 436 US 658 98 S Ct 2018, 56, L.Ed. 2d 611, 1978, 253, 258, 259. *Pembaur v Cincinnati* 475 US 469 106 S Ct 1292, 89, L Ed 2d 452 (1986) and these claims were dismissed for failing to State a Claim under a FRCP 12 (b) (6) motion for noncompliance with USDC Central District Of California Local Rules 7.6 and 7.9, although not explicitly stated by the district court

These claims were not dismissed under a FRCP 41 (b) motion. This failure to comply with local rules does not rise to the level of a failure to prosecute under FRCP 41(b) See *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 319-320, 101 L. Ed. 2d 285, 108 S. Ct. 2405 (1988) (Brennan, J. dissenting) *Carver v Bunch* , 946 F.2d 451; 453, 454, 455, (6th Circuit 1991) *Schilling v. Walworth County Park & Planning Commission*, 805 F.2d 272, 276-77 (7th Cir. 1986) *J.F. Edwards Const. Co. v. Anderson Safeway Guard Rail Corp.*, 542 F.2d 1318, 1323 n. 6 (7th Cir. 1976) ("Unless the violation of a local rule constitutes failure to prosecute, Rule 41 does not provide for dismissal for violation of a local rule.").

. Interpreting Local Rule 7.9 as authorizing a district court to dismiss petitioner complaint for failure to state a claim under FRCP 12 (b) (6) with prejudice and without leave to amend would seemingly make that rule inconsistent with the Federal Rules of Civil Procedure. The 6th Circuit declined to subscribe to such an interpretation and instead found that the district court erred in concluding that its Local Rules authorized it to dismiss *Carver's* complaint under the same circumstances of this case. See also *Schilling v. Walworth County Park & Planning Commission*, 805 F.2d 272, 276-77 (7th Cir. 1986) (district court should warn pro se litigants of possible consequences of neglect if it intends to sanction with dismissal).

An interpretation of the USDC Local Rule 7.9 (App G, page 7.9) which permitted a district court to dismiss a plaintiff's action merely for failing to respond to another party's motion would, at a minimum, expand the district court's authority over that which it possesses under Rule 41(b) of the Federal Rules of Civil Procedure. See *J.F. Edwards Const. Co. v. Anderson Safeway Guard Rail Corp.*, 542 F.2d 1318, 1323 n. 6 (7th Cir. 1976) ("Unless the violation of a local rule constitutes failure to prosecute, Rule 41 does not provide for dismissal for violation of a local rule."). T

The sixth circuit was unable to conclude that Carver's failure to respond to the defendants' motion to dismiss, standing alone, amounted to a failure to prosecute, when the complaint was dismissed with prejudice and without leave to amend six months after it was filed, Also the Supreme court has repeatedly held, "'The Federal Rules reject the approach that pleading is a game of skill in which one misstep by [a pro per civil rights litigant] counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.'" *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 319-320, 101 L. Ed. 2d 285, 108 S. Ct. 2405 (1988) (Brennan, J. dissenting) (quoting *Foman v. Davis, 371* U.S. 178, 181-182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962)).

The district court did not warn the pro per civil rights litigant in September 1999 when two motions to dismiss appeared that the only course of action was to oppose them, and the district court on 24th Sept 1999, 10 days before the Two Motions To Dismiss hearing date of Oct 4th 1999 refused to grant a continuance on the two motions to dismiss. After that the district court did not warn the pro per civil rights litigant that the "remaining defendants" which included the 1-10 Caucasian Sheriff Deputy Bailiff does of Judge Laurence D Rubin's courtroom must be served personally or that they would be dismissed for failing to prosecute. And the *Henderson v. Duncan*, 779 F.2d 1421 (9th Cir. 1986), failure to prosecute factors petitioner believes weighs in her favor, "(1) the public's interest in expeditious resolution of litigation; (2) the Court 's need to manage its Docket;. (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Id. at 1423. .

ARGUMENT 14

14. The school district is liable under Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. (Title IX), under the continuing violation theory see *Havens Reality Corp v Coleman* 455 U.S. 363 365(1982) for sexual harassment and discrimination, hostile environment and retaliations, when the claim is not based solely on one incident of a instructor sexual assault on a student in a class, but is challenging an unlawful practice of continuing violation sexual discrimination, and the unlawful practices of school district, cover up of the complaint when she initially reported it to frame her and which resulted in more serious physical injury.

The writ of certiorari should be granted as it raises issues of importance in regards to Public Safety Under the current law of Title IX there is a fundamental incentive for school district employees and potential employees to be asked to cover up sexual assault complaints against other school district employees by their employer the School District.

Petitioner is a member of a protected class, who was subjected to unwelcome sexual harassment and discrimination which continued and became sufficiently severe and pervasive to alter the conditions of petitioner's education and the cumulative effect was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and was badly physically injured on account of it, and that a basis for school district liability has been established. See *Gebser, v. Lago Vista Independent School District* 524 U.S. 274; 118 S. Ct. 1989; 141 L. Ed. 2d 277; (June 22nd 1998) Faragher, 524 U.S. at 787-89; Harris, 510 U.S. at 20-23; [**39] Meritor, 477 U.S. at 65-73.

CONCLUSION

Fore the foregoing reasons, petitioner Angela Bernhardt requests that a Writ Of Certiorari issue in this case.

Dated: 1st February 2002

Respectfully Submitted,

A Bernhardt

Angela Bernhardt
Petitioner In Pro Per

No.

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, & COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX A
FOR PETITION FOR A WRIT OF CERTIORARI

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Petitioner – In Pro -Per

APPENDIX A

ENTERED 25TH JUNE 2001

UNITED STATES COURT OF APPEALS FOR 9TH CIRCUIT MEMORANDUM OPINION

ANGELA BERNHARDT,

Plaintiff-Appellant,

v. SANTA MONICA COLLEGE, a public entity; et al.,

Defendants- Appellees.

Nos. 00-55596, 00-55530

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

June 11, 2001 **, Submitted

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a) (2). Accordingly, we deny Bernhardt's request for oral argument.

June 25, 2001, Filed

NOTICE: [*1] RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

PRIOR HISTORY: Appeals from the United States District Court for the Central District of California.

D.C. No. CV-99-02598-JSL.

J. Spencer Letts, District Judge, Presiding.

DISPOSITION: No. 00-55596 AFFIRMED. No. 00-55930 AFFIRMED.

APPENDIX A

ENTERED 25TH JUNE 2001

UNITED STATES COURT OF APPEALS FOR 9TH CIRCUIT MEMORANDUM OPINION

COUNSEL ANGELA BERNHARDT, Plaintiff - Appellant (00-55596, 00-55530), Pro se, Los Angeles, CA.

For SANTA MONICA COLLEGE, SANTA MONICA COLLEGE COMMUNITY DISTRICT, SANTA MONICA COLLEGE BOARD OF TRUSTEES, SANTA MONICA

COLLEGE POLICE DEPARTMENT, R. L. JONES, RON MARABLE, EILEEN MILLER, PIEDAD ROBERTSON, ROBERT SAMMIS, JOANNE FIELDER,

Defendants - Appellees :

Mary L. Dowell, Esq.,

LIEBERT CASSIDY WHITMORE, Los Angeles, CA.

For BRENDA SIMMONS, HERB RONEY, DOROTHY EHRHART MORRISON, NANCY CATTELL, CAROL L. CURRY, ILLONA JO KATZ, PATRICK NICHELSON, ANNETTE SHAMEY,

Defendants - Appellees:

Mary L. Dowell, Esq., LIEBERT CASSIDY WHITMORE, Los Angeles, CA.

For STATE OF CALIFORNIA, OFFUNE OBIANEWE, DOES, 1-50, DOES, 1-100, Defendants - Appellees: No Appearance.

APPENDIX A

ENTERED 25TH JUNE 2001

UNITED STATES COURT OF APPEALS FOR 9TH CIRCUIT MEMORANDUM OPINION

For LOS ANGELES COUNTY SHERIFF [*2] DEPARTMENT, COUNTY OF LOS ANGELES, COUNTY OF LOS ANGELES SANTA MONICA MUNICIPAL COURT, LAURENCE D. RUBIN, LEE BACA, SHERMAN MOTEN, TERRY JANUARY, Defendants - Appellees:

Jonathan H. Geller, Esq., OFFICE OF THE COUNTY COUNSEL, Los Angeles, CA.

JUDGES: Before: O'SCANNLAIN, SILVERMAN, & GOULD, Circuit Judges.

OPINION: MEMORANDUM * - - Footnotes- -* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3. -End Footnotes- -

In these consolidated appeals, Angela Bernhardt appeals pro se the district court's orders dismissing, without leave to amend, her civil rights action arising out of an alleged sexual harassment at Santa Monica College in 1994. We have jurisdiction under 28 U.S.C. § 1291. We affirm Nos. 00-55596 and 00-55930. With respect to Appeal No. 00-55596, we review de novo the district court's orders of dismissal entered on October 13, 1999, and February 29, 2000. Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295 (9th Cir. 1998). [*3] We affirm on grounds that Bernhardt's state tort claims against the Santa Monica College defendants are barred by the doctrine of res judicata, and because Bernhardt failed to prosecute her remaining claims.

APPENDIX A

ENTERED 25TH JUNE 2001 - 9TH CIRCUIT: UNITED STATES COURT OF APPEALS FOR 9TH CIRCUIT MEMORANDUM OPINION

With respect to Appeal No. 00-55930, we have considered Bernhardt's contentions regarding the various orders raised in that appeal and we conclude that the district court did not abuse its discretion in issuing those orders. Accordingly, we affirm the orders raised in Appeal No. 00-55930, including, but not limited to, the district court's vexatious litigant order entered on May 1, 2000. See De Long v. Hennessey, 912 F.2d 1144, 1146-48 (9th Cir. 1990).

No. 00-55596 is AFFIRMED.

No. 00-55930 is AFFIRMED.

No.

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL., & COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX B
FOR PETITION FOR A WRIT OF CERTIORARI

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Petitioner – In Pro -Per

APPENDIX B

DISTRICT COURT ORDER ENTERED MAY 1ST 2000
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
ORDER DECLARING PLAINTIFF A VEXATIOUS LITIGANT

ANGELA BERNHARDT
Plaintiff.
v.
SANTA MONICA COLLEGE, ET AL.,
Defendants CASE NO. CV- 99-2598 -JSL

On March 24, 2000, the court ordered plaintiff Angela Bernhardt to show cause (1) why she should not be declared a vexatious litigant pursuant to Fed.R. Civ. P. 11 and Local Rule 27A and (2) why the court should not prohibit the Clerk of the court from accepting any further filings from the plaintiff which relates to the allegations made in Case No.CV 99-2598_JSL unless plaintiff pays a deposit of $500.00 pec filing to the clerk, which would be forfeited if such filing is determined by the court to be frivolous.

On April 14th 2000., plaintiff filed her response to the order to Show Cause. The court has reviewed the papers filed in connection with this matter and is fully apprised of the relevant facts and law. Pursuant to Rule 11 of the Federal Rules Of Civil Procedure and Local Rule 27A, the court has considered the pattern of plaintiff's litigative conduct which has developed in this case and a - related case, Angela Bernhardt v. Los Angeles County, et al., CV 99-10121-JSL, (e.g., filing repeat meritless motions and other papers, naming multiple defendants against whom no cause of action could be stated and filing papers filled

APPENDIX B
DISTRICT COURT ORDER ENTERED MAY 1ST 2000
with frivolous arguments and conclusions), and concludes that plaintiff has abused the court's process and is likely to continue such abuse, unless protective measures are taken. It is therefore the court's conclusion that this order is necessary to discourage and control the vexatious
Accordingly,

IT IS HEREBY ORDERED that plaintiff Angela Bernhardt be declared a vexatious litigant pursuant to Federal Rule of Civil Procedure 11 and Local Rule 27A. The Clerk Of the Court shall accept no further filing from plaintiff Angela Bernhardt which related to the allegations made in Case No. CV-99-2598-JSL, unless

plaintiff pays a deposit of $500.00per filing to the clerk, which would be forfeited if such filing is determined by the court to be frivolous.

IT IS SO ORDERED - ENTERED ON MAY 1ST 2000
Spencer Letts
United States District Judge
DISTRICT DOCKET 93

PLAINTIFF FOUND TO BE A VEXATIOUS LITIGANT
BY DISTRICT COURT
CIVIL MINUTES GENERAL
ENTERED 26TH APRIL 2000
USDC Central District Of California

CIVIL MINUTES GENERAL
Case No CV-99-2598 JSL
Date 4/24/00

Bernhardt v Santa Monica College, et al.

APPENDIX B
PRESENT HON J. SPENCER LETTS
Nancy J. Webb
Deputy Clerk Terry Kramer, not present court reporter

ATTORNEYS FOR PLAINTIFFS
NOT PRESENT

ATTORNEYS FOR DEFENDANTS
NOT PRESENT

PROCEEDINGS: ORDER (In Chambers)

ON THE COURT'S OWN MOTION, the order to show cause why plaintiff should not be declared a vexatious litigant presently set on the Court's Calendar for 1st May 2000 is taken off calendar:

Other: Cause Has Not Been Shown. Plaintiff is found to be a vexatious litigant. Separate order to follow.

Entered April 26th 2000
DISTRICT DOCKET 92

ORDER DENYING PLAINTIFF'S MOTIONS AND ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE DECLARED A VEXATIOUS LITIGANT

ENTERED 24TH MARCH 2001

United States District Court Central District Of California

APPENDIX B
ENTERED 24TH MARCH 2001
FILED MARCH 24 2000
ANGELA BERNHARDT
Plaintiff
v.
SANTA MONICA COLLEGE ET AL., Defendants

ORDER DENYING PLAINTIFF'S MOTIONS AND ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE DECLARED A VEXATIOUS LITIGANT

DISTRICT COURT DOCKET CV-99-2598-JSL

On March 20th, 2000, plaintiff Angela Bernhardt filed the following documents: (1) Notice of Motion & Motion Under FRCP 15 (A) to Reconsider Plaintiff Angela Bernhardt Amending Defendants' Caption on First Page Of First Amended Complaint; (2) Under FRCP (g) (sic) & FRCP 12 (h) (1) Motion To Reconsider the Court's Order Dated 28th Feb 2000, Etc.; and (3)Plaintiff's Notice Of Intent that Plaintiff Wishes To Amend the Complaint/First Amended Complaint for CV-99-2598-JSL Whenever Permitted to Do So to Ensure That The Claims Are Clearly Stated. ("March 20th, 2000 Motions").

Having reviewed the papers filed in connection with these matters, and being fully apprised of the relevant facts and law,

APPENDIX B
IT IS HEREBY ORDERED that the March 20, 2000 Motiions be DENIED.

IT IS FURTHER ORDERED that plaintiff appear before this court on May 1st 2000, at 1:00 p.m. to SHOW CAUSE: (1) why she should not be declared a vexatious litigant pursuant to Fed. R. Civ. P. 11 and Local Rule 27A, and (2) why the court should not prohibit the Clerk of the Court from accepting any further filings from plaintiff which relate to the allegations made in Case No. CV-99-2598 JSL, unless the Plaintiff pays a deposit of

$500.00 per filing to the clerk, which would be forfeited if such filing is determined by the court to be frivolous.
Plaintiff shall file a written response to this order to show cause no later that April 17th 2000. Defendants may file a reply no later that April 24, 2000. IT IS SO ORDERED.

DATED 3/24/00 J SPENCER LETTS
United States District Judge
ENTERED ON MARCH 24TH 2000
DISTRICT DOCKET 83

ENTERED 24 March 00
United States District Court
Central District Of California
CIVIL MINUTES GENERAL
Case No CV-99-2598-JSL Date 3/23/00

Bernhardt v Santa Monica College, et al.
PRESENT - HON J. SPENCER LETTS
ATTORNEYS NOT PRESENT
PROCEEDINGS: ORDER (In Chambers)
ON THE COURT'S OWN MOTION,

APPENDIX B

Plaintiff's Motion For Reconsideration presently set on the Court's calendar 4/17/00 is taken off calendar. and denied without a hearing and a separate order to follow.

Entered March 24 2000 - DISTRICT DOCKET 82

ORDER ENTERED 6TH MARCH 2000

United States District Court

Central District Of California

FILED MARCH 3 2000

ANGELA BERNHARDT

Plaintiff

v.

SANTA MONICA COLLEGE ET AL.,

Defendants

CV-99-2598-JSL

ORDER

Before the court is a document filed by Plaintiff Angela Bernhardt entitled "Notice of Motion and (1) Motion for Leave for Plaintiff Angela Bernhardt to Amend Caption Regarding Defendants of First Page Of First Amended Complaint; (2) Plaintiff Angela Bernhardt's Supplementary Declaration and Points and Authorities in Support of Equitable Estoppel on Personal Service...or in the Alternative Provision For Time to Serve them Now Personally Under FRCP 4 (m)."

Having reviewed the papers filed in connection with this mater and being fully apprised of the relevant facts and law.

IT IS HEREBY ORDERED that the plaintiff's motion be denied. The Court dismissed the remainder of the Defendants in its February 28th 2000 Order.

IT IS SO ORDERED.

APPENDIX B
DATED:3/3/00
J Spencer Letts
United States District Judge
ENTERED MARCH 6TH 2000 · DISTRICT COURT DOCKET 78

ENTERED 29TH FEBRUARY 2000
ORDER DISMISSING REMAINING DEFENDANTS FOR LACK OF PROSECUTION

United States District Court
Central District Of California
FILED 28TH FEB 2000
ANGELA BERNHARDT
Plaintiff
v.
SANTA MONICA COLLEGE ET AL.,
Defendants
CV-99-2598-JSL
ORDER DISMISSING REMAINING DEFENDANTS FOR LACK OF PROSECUTION
THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP RULE 77 (d)

On January 19, 2000, the Court issued an order to show cause why this case should not be dismissed against the remaining Defendants, Terry January, Sherman Moten, Offune Obianewe, the State Of California, and various Doe Defendants (the "Remaining Defendants") for lack of prosecution.

The Court has considered the papers filed in connection with this matter and is fully appraised of the relevant facts and law.

APPENDIX B

ORDER DISMISSING REMAINING DEFENDANTS FOR LACK OF PROSECUTION –ENTERED 29TH FEB 2000

Plaintiff has failed to show cause why the Remaining Defendants should not be dismissed. The State Of California is immune from suit pursuant to the Eleventh Amendment. In addition, Plaintiff's service of the summons and complaint on the Remaining Defendants was improper on several grounds.

PAGE 2

Federal Rule Of Civil Procedure 4 (e) (1) allows service of process within the United States "pursuant to the law of the state in which the district court is located...."[1] California law provides for service of the summons and complaint by mail as follows: A copy of the summons and of the complaint shall be mailed ..to the person to be served, together with two copies of the notice and acknowledgement provided for in subdivision (b) and a return envelope, postage pre-paid, addressed to the sender. Cal. Code Civ. P. 415.30 (a). The notice set forth in Section 415. 30 (b), which must be included with the summons and complaint, inter alia, directs the party to whom the summons and complaint are mailed to complete the notice form and return it to the sender within 20 days. If the addressee does not comply, he risks incurring "liability for the payment of any expenses incurred in serving a summons upon you in any other manner permitted by law." Cal. Code Civ. P. 415.30 (b) Plaintiff has submitted copies of documents entitled "Proof Of Service/Acknowledgement of Service" for the Remaining Defendants, which indicate Plaintiff's mailing of the summons and complaint and

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[1] Fed R. Civil P. 4 (e) (2) also provides for service of process: by delivering a copy of the summons and of the

APPENDIX B
ORDER DISMISSING REMAINING DEFENDANTS FOR LACK OF PROSECUTION – ENTERED 29TH FEB 2000

complaint to the individual personally or by leaving copies thereof at the individuals dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. Because plaintiff served all of the Remaining Defendants by mail, this provision is not applicable

PAGE 3

other documents to the Remaining Defendants, and Fed. R. Civ. P. 4 (d) waivers to Terry January, Sherman Moten, and certain Doe Defendants. There is no evidence that Plaintiff served the Remaining Defendants with the notice required by Section 415. 30 (b). Not only does the "Acknowledgement of Service" contained in the form used by Plaintiff not comply with the statutory requirements of Section 415. 30 (b), but none of the forms are signed by any of the Remaining Defendants. There is no indication that Plaintiff ever attempted to serve the Remaining Defendants in any other manner.

The signatures of the person (s) purporting to make service also are unintelligible on the documents submitted by Plaintiff. "A summons may be served by any person who is at least 18 years of age and not a party to the action." Cal. Code civ. P. 414.10. If Plaintiff was the one to serve these documents by mail, such service was invalid.

Finally, the various Doe Defendants could not have been properly served as doe defendants. The purpose of service of process is to charge the defendant with notice of the pending action. See Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 699, 108 S. Ct. 2104, 2108 (1988). Mailing a copy of the summons and complaint to "1-10 Caucasian Male Unknown Named

APPENDIX B
ENTERED 29TH FEBRUARY 2000
ORDER DISMISSING REMAINING DEFENDANTS
FOR LACK OF PROSECUTION
DISTRICT COURT DOCKET 77

Sheriff Deputy Does of Judge Laurence D Rubin's Courtroom R (Santa Monica Courthouse) and County of Los Angeles Sheriff's Department" and 1-50 Sheriff Deputy Does" does not provide "notice reasonably calculated... to appraise interested parties of pendency of the action ..." Mullane v Central Hanover Bank and Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). In general, only after doe defendants are identified and

PAGE 4

an amended complaint naming the doe defendants is filed can those defendants be properly served.

In her reply to the order to the Order to show Cause, Plaintiff complains that Deputy County Counsel deliberately misled her to believe hat she had properly served defendants January and Moten. For example plaintiff clams that the Motion to Dismiss filed by Geller on behalf of various County Of Los Angeles defendants, dated August 25th, 1999, "was made to be intentionally ambiguous because Jonathan H. Geller had informed me in May 1999 that all County Of Los Angeles defendants had been served -- including Sheriff Sherman Moten and Sheriff Terry January" and that therefore, plaintiff believed that Moten's and January's exclusion from the motion to dismiss was a "typing error." February 11, 2000 Declaration of Angela Bernhardt at 2:8-16.

Plaintiff makes much of the fact that in the Motion to Dismiss, Geller indicated beneath his signature that he represented Moten and January, although they were not listed as defendants upon whose behalf the motion was being made. [2] Plaintiff's complaints even if true are without consequence.

APPENDIX B
ENTERED 29TH FEBRUARY 2000
ORDER DISMISSING REMAINING DEFENDANTS
FOR LACK OF PROSECUTION
DISTRICT COURT DOCKET 77

Moten and January were entitled to be represented by counsel in this action, even though they had not been served. The fact that they were represented by counsel did not excuse Plaintiff from her obligation to effect proper service. As set forth in his declaration, Geller deliberately excluded Moten and January from the Motion to Dismiss because they were never served. Neither Moten nor January (PAGE 5) ever appeared or took any other action in this case that would relieve plaintiff of her service obligations.[3]

[2] Plaintiff's complaint that Geller "never informed me that service had never been affected" also is without merit. Defendants have no such obligation.

ORDER For the reasons stated more fully herein, IT IS HEREBY ORDERED that the remaining Defendants in this action, Terry January, Sherman Moten, Offune Obianewe, the State of California, and the various doe defendants be DISMISSED. IT IS SO ORDERED

DATE: 2/28/00 J. SPENCER LETTS
United States District Judge

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[3] Plaintiff indicates that Moten and January were not served in any different manner than the other defendants in this case. Merely because the other defendants chose to waive their objections to plaintiff's defective serve did not obligate Moten and January to do the same. Moten and January never appeared or took any other action that would result in the waiver of proper service.

APPENDIX B

Entered JAN 25 2000 - ORDER TO SHOW CAUSE RE DISMISSAL FOR LACK OF PROSECUTION RE REMAINING DEFENDANTS STATE OF CALIFORNIA, SHERMAN MOTEN, TERRY JANUARY AND OFFUNE OBIANEWE

United States District Court
Central District Of California
CIVIL MINUTES GENERAL
Case No CV-99-2598 JSL

Date Jan 24, 2000
Bernhardt v Santa Monica College, et al.
PRESENT
HON J. SPENCER LETTS
Nancy J. Webb
Deputy Clerk none present
court reporter none present
ATTORNEYS PRESENT FOR PLAINTIFFS NOT PRESENT
ATTORNEYS PRESENT FOR DEFENDANTS NOT PRESENT

PROCEEDINGS: AMENDED ORDER TO SHOW CAUSE RE DISMISSAL FOR LACK OF PROSECUTION RE REMAINING DEFENDANTS STATE OF CALIFORNIA, SHERMAN MOTEN, TERRY JANUARY AND OFFUNE OBIANEWE

IT IS ORDERED that counsel show cause in writing not later than February 2nd 2000, why this action should not be dismissed for lack of prosecution.

APPENDIX B
Entered JAN 25 2000

In accordance with Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7.11, no oral argument will be heard on this matter unless ordered by the Court. The Order to Show Cause will stand submitted upon the filing of plaintiff (s)' response. The Court will consider as a satisfactory response the filing of the following on or before the date shown above.

Proof of service of summons and complaint on all defendants.

· DISTRICT DOCKET 70

Entered JAN 20 2000 ·PROCEEDINGS: ORDER TO SHOW CAUSE RE DISMISSAL FOR LACK OF PROSECUTION RE REMAINING DEFENDANTS - (DISTRICT DOCKET 68)

United States District Court

Central District Of California

CIVIL MINUTES GENERAL

Case No CV-99-2598-JSL

Date Jan 19, 2000

Bernhardt v Santa Monica College, et al.

PRESENT

HON J. SPENCER LETTS

ATTORNEYS

NOT PRESENT IT IS ORDERED that counsel show cause in writing not later than February 2nd 2000, why this action should not be dismissed for lack of prosecution.

APPENDIX B
Entered JAN 20 2000
ORDER TO SHOW CAUSE RE DISMISSAL FOR LACK OF PROSECUTION RE REMAINING DEFENDANTS
In accordance with Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7.11, no oral argument will be heard on this matter unless ordered by the Court. The Order to Show Cause will stand submitted upon the filing of plaintiff (s)' response. The Court will consider as a satisfactory response the filing of the following on or before the date shown above. Proof of service of summons and complaint on all defendants.

ENTERED JAN 4 2000
ORDER DENYING PLAINTIFF'S REQUEST TO CORRECT OR MODIFY THE COURT'S DOCKET
United States District Court
Central District Of California

ANGELA BERNHARDT Plaintiff
v.
SANTA MONICA COLLEGE ET AL., Defendants
CV-99-2598-JSL
Before the court are two documents filed by plaintiff Angela Bernhardt entitled "Request to the Court Under FRAP 10 (e) (1) (2) Regarding Omission of Plaintiff's Opposition to County Of Los Angeles Motion To Dismiss Filed With District Court on 4th Oct 1999, in the Court Docket at 42 & For Inclusion Now" and "FRAP 10 (e) (1) & (2) (b) & (C) Request for Correction or Modification of the Record to Make a Separate entry on the Civil Docket That Plaintiff's First Amended Complaint Was On July 6th 1999, etc." in which plaintiff again requests that the court modify how certain entries appear on the court docket.

APPENDIX B

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law.

IT IS HEREBY ORDERED that the plaintiff's requests be DENIED.

IT IS SO ORDERED

DATE JAN 4TH 2000

J SPENCER LETTS

United States District Judge

DISTRICT DOCKET 67

United States District Court

Central District Of California

FILED DEC 14TH 1999

ANGELA BERNHARDT

Plaintiff

v.

SANTA MONICA COLLEGE ET AL.,

Defendants

CV-99-2598-JSL

ORDER DENYING PLAINTIFF'S REQUEST TO CORRECT OR MODIFY THE RECORD AND CIVIL DOCKET

Before the court is a document filed by plaintiff entitled "Request to the Court for Corrections or Modifications of the Record and Civil Docket to Reflect the True Record, " in which plaintiff requests that the court modify how certain entries appear on the court's docket.

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law,

APPENDIX B
ENTERED DEC 15TH 1999

IT IS HEREBY ORDERED that the plaintiff's request be DENIED. There does not appear to be any substantive error in the court's docket and the court does not have the power to make the modifications requested in the absence of such substantive error. IT IS SO ORDERED

J. Spencer Letts
United States District Judge.

DISTRICT DOCKET 61.

ENTERED ON OCT 18TH 1999
ORDER DENYING PLAINTIFF'S
EX-PARTE APPLICATION

United States District Court
Central District Of California

FILED OCT 15TH 1999

ANGELA BERNHARDT Plaintiff
v.
SANTA MONICA COLLEGE ET AL., Defendants

CV-99-2598-JSL

The ex parte application of plaintiff Angela Bernhardt to amend the first amended complaint, for leave to file additional exhibits to the first amended complaint, and to continue the motion to dismiss was decided without a hearing on Sept 30th 1999.

APPENDIX B
ENTERED ON OCT 18TH 1999
ORDER DENYING PLAINTIFF'S
EX-PARTE APPLICATION

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that plaintiff's ex parte application be DENIED.

IT IS SO ORDERED

DATE: 10 /15/1999 J. Spencer Letts
United States District Judge.
ENTERED ON OCT 18TH 1999
DISTRICT DOCKET 54.

[PLEASE NOTE THE PLAINTIFF'S EX PARTE APPLICATION & REQUEST TO CONTINUE THE MOTION TO DISMISS WAS FILED IN THE DISTRICT COURT ON 21ST SEPT 1999 AND WAS DENIED BY FRIDAY 24TH SEPT 1999 OVER THE TELEPHONE BY NANCY WEBB THE COURT'S CLERK SEE ORDER ENTERED 10/13/1999 BELOW]

ENTERED ON OCT 13TH 1999
ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS

United States District Court
Central District Of California
FILED OCT 8TH 1999
ANGELA BERNHARDT
Plaintiff
v.
SANTA MONICA COLLEGE ET AL.,
Defendants

APPENDIX B
ENTERED ON OCT 13TH 1999
ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS
CV-99-2598-JSL

The motion of defendants County Of Los Angeles, County Of Los Angeles Sheriff's Department, County of Los Angeles Santa Monica Municipal Court, Laurence D. Rubin, and Lee Baca ("County Defendants") to dismiss and he motions of defendants Santa Monica College, Santa Monica Community College District, Santa Monica College Board Of Trustees, Santa Monica College Police department., R.L. Jones, Ron Marable, Eileen Miller, Piedad Robertson, Robert Sammis, Joanne Fielder,

Brenda Simmons, Herb Roney, Dorothy Ehrhart Morrison, Nancy Cattell, Carol L.Curry, Illona Jo Katz, Patrick Nichelson, and Annette Shamey ("Santa Monica College Defendants") to dismiss were decided without a hearing on Sept 30th 1999.

Plaintiff filed her complaint on March 15th 1999. On the face of the complaint, plaintiff indicated her belief that the

Page 2

complaint would need to be amended. Pursuant to Federal Rule Of Civil Procedure 15 (a), plaintiff was entitled to file an amended complaint prior to the filing of any responsive pleading, or within twenty days of service. Plaintiff did not amend her complaint, and certain defendants filed responsive pleadings.

On May 3rd 1999, [Santa Monica College] defendants moved to dismiss plaintiff's complaint. Rather than opposing the motions to dismiss, on May 12th 1999, at the Informal status conference, plaintiff instead indicated that she had prepared an application for leave to amend the complaint, which was filed that day, wherein she acknowledge that her initial complaint was defective and

APPENDIX B
ENTERED ON OCT 13TH 1999
ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS

requested additional time to prepare and file an amended complaint. Defendants agreed to abandon their objections to plaintiff's filing an amended complaint at that juncture of te case, and to permit plaintiff to amend her complaint within a reasonable time. [Santa Monica College] Defendants also agreed to withdraw their motion to dismiss. The court directed the parties to agree to a time certain by which plaintiff would file her amended complaint.

Rather than immediately proposing a deadline, as contemplated by the court, not until May 30th 1999, almost three weeks after the informal Status Conference, did plaintiff request that she be allowed another three months until Sept 1st 1999, to amend her complaint. Defendants proposed that the plaintiff be allowed 30 days to amend her complaint. The parties were unable to agree, and plaintiff filed another Motion for additional time to amend her complaint. Plaintiff's motion for additional time was denied by the court on June 29th 1999. On July 7 1999 [correction July 6th 1999] nearly four months after filing her complaint and nearly two months after her initial request to amend, plaintiff filed her first amended complaint .

On August 25th 1999, and Sept 3, 1999 the County Defendants and Santa Monica College defendants, respectively filed motions to dismiss plaintiff's first amended complaint. Rather than filing a timely opposition on Sept 21st 1999, plaintiff instead filed an ex parte application for more time to prepare and file an second amended complaint, for leave to file additional exhibits to the first amended complaint, and for a continuance of the hearing on the motions to dismiss. Plaintiff's ex parte application was denied.

APPENDIX B
ENTERED ON OCT 13TH 1999
ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS

On Oct 4th 1999, two weeks after it was due, plaintiff filed a document entitled "Plaintiff Angela Bernhardt's Early Opposition to Santa Monica College et al Defendants [sic] Motion To Dismiss Plaintiff's complaint under FRCP 12 (b), A More Thorough Version Shortly, " in which she states that "a much fuller version [is] to follow shortly." Opposition at 4.

At the time her initial complaint was filed, plaintiff knew it was deficient and would need to be amended. Plaintiff was given ample time, almost four months to correct the defects in her initial complaint and submit her claims to the court in an amended complaint.

By repeatedly requesting additional time to file amended complaints that were not yet drafted, and now by claiming that "a much fuller version' of her opposition is "to follow shortly, " plaintiff has attempted to avoid having the court examine the merits of her claims. Plaintiff's requests have not been valid, and have forced defendants to incur needless additional expense in opposing plaintiff's requests.

PAGE 4

The basic facts underlying plaintiff's complaint have not changed. Plaintiff claims that in 1994, defendant Jones sexually harassed her, and that over the next few years, the remainder of the defendants failed to handle properly plaintiff's reporting of the harassment. Defendant's have a right to respond to the allegations against them and, therefore, to have the court act on their motions to dismiss without further delay.

Having reviewed the papers filed in connection with this matter including plaintiff's opposition brief [s] and being fully apprised of the relevant facts and law,

APPENDIX B
ENTERED ON OCT 13TH 1999
ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS
IT IS HEREBY ORDERED that the motion of the County Defendants to dismiss be GRANTED.

IT IS FURTHER ORDERED that the motion of the Santa Monica College Defendants to dismiss be GRANTED.
The complaint against the County Defendants and the Santa Monica College Defendants shall be dismissed with prejudice.

IT IS SO ORDERED
DATE; 10 /8/1999 J. Spencer Letts
United States District Judge.
ENTERED ON OCT 13TH 1999
DISTRICT DOCKET 53

CIVIL MINUTES GENERAL
ENTERED ON OCT 1st 1999
FILED 29th SEPT 1999
United States District Court Central District Of California
Case No CV-99-2598-JSL Date 9/29/1999
Bernhardt v Santa Monica College, et al.

PRESENT HON J. SPENCER LETTS

Nancy J. Webb Deputy Clerk court reporter

ATTORNEYS PRESENT FOR PLAINTIFFS
NOT PRESENT - ATTORNEYS PRESENT FOR DEFENDANTS NOT PRESENT

APPENDIX B
ENTERED ON OCT 1st 1999
FILED 29TH Sept 1999 –
ORDER GRANTING - DEFENDANTS' MOTIONS TO DISMISS
PROCEEDINGS: ORDER (In Chambers)
ON THE COURT'S OWN MOTION, defendants' Motion To Dismiss
presently set on the Court's calendar [Oct 4th1999] is taken off calendar

GRANTED without a hearing. Separate Order To Follow.

Entered Oct 1st 1999
DISTRICT DOCKET 51

TRANSCRIPT OF PROCEEDINGS -CONFERENCE CALL - Tuesday July 6th 1999

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE J.SPENCER LETTS, PRESIDING
UNITED STATES DISTRICT COURT JUDGE
ANGELA BERNHARDT
PLAINTIFF,
Vs.
COUNTY OF LOS ANGELES ET AL,
DEFENDANTS
CV-99-2598-JSL

APPENDIX B
TRANSCRIPT OF PROCEEDINGS -TUESDAY 6TH JULY 1999 LOS ANGELES CALIFORNIA
CONFERENCE CALL 1.32 o'clock p.m

TERRY KRAMER CVR - OFFICIAL REPORTER
UNITED STATES COURTHOUSE -312 NORTH SPRING STREET LOSANGELES CALIFORNIA 90012 (213) 680 1908

APPEARANCES - FOR THE PLAINTIFF:
Angela Bernhardt (Pro -Se)
P.O. Box 480509 Los Angeles California 90048

For the Santa Monica [College] Defendants:
Liebert, Cassidy & ~~Frierson~~ [Whitmore]
6033, West Century Boulevard , Suit 601
Los Angeles, California 90045BY: Mary Dowell
Attorney at Law

For the County of Los Angeles Defendants:
Los Angeles County 500 West Temple Street, 648 Los Angeles, California 90012 BY: Jonathan Geller Attorney at Law.

THE COURT: I guess we're going to have to do things on the record, so we're on the record.

It seems to me that if I'm understanding correctly, everything has been resolved, it's a matter of saying in one place what's been resolved and how.

What we got when we were together, my memory is that because the answer was filed before the motion to dismiss, the original motion to dismiss, that there would probably be a right to amend.

APPENDIX B
TRANSCRIPT OF PROCEEDINGS -TUESDAY 6TH JULY 1999 LOS ANGELES CALIFORNIA
CONFERENCE CALL 1.32 o'clock p.m

MS. BERNHARDT: Right.

THE COURT: And nobody wanted to litigate that or find out what the answer was, so what we did was we gave 30 days, which is the ordinary length of time to amend.

MS. BERNHARDT: I was -- Your Honor, nobody told me 30 days, so that's why I didn't operate within the 30 days. If I'd know[n], I would have operated within 30 days.

What happened, Your Honor, was that you said for me to arrange with Mary and Jonathan, And what happened was that I did ask for September. I had not--

THE COURT: The answer to that is no, but --

MS. BERNHARDT: I understand that, Your Honor, but I didn't -

THE COURT: Okay.

MS. BERNHARDT: I mean, if I'd known 30 days, I would have operated within the 30 days.

I had a letter --

THE COURT: Do you know what the word moot means?

MS. BERNHARDT: Pardon?

THE COURT: Do you know what the word moot, m-o-o-t, means? It means that the issue has been resolved, so we don't need to talk about it. That issue has been resolved. I understand that the thing you filed on July 6 [1 hour prior] is the proposed amended complaint.

MS. BERNHARDT: It's a little repetitive, excuse me. Yes.

THE COURT: So if I accept that as the amended complaint, which I will --

APPENDIX B
TRANSCRIPT OF PROCEEDINGS –
CONFERENCE CALL - Tuesday July 6th 1999, Los Angeles California 1.32 o'clock p.m

MS BERNHARDT: Thank you, Your Honor.

THE COURT: -- then if there is going to be a motion to dismiss, now is the time to start considering that.

MS. BERNHARDT: Yes, Your Honor.

THE COURT: Does everybody understand that?

MS. BERNHARDT. Yes.

MR. GELLER: Was something filed today, Your Honor, because I'm in the dark on this.

THE COURT: Okay.

MS. DOWELL: So am I, Your Honor. If there's been an amended complaint filed today, it has not reached me yet.

THE COURT: I may have a courtesy copy. I'm not sure what I have, but I have it in hand, so you will have it. Am I correct that --

MS. BERNHARDT: It was served today, Your Honor.

THE COURT: Then in that circumstance am I correct that all of the pre-existing questions have become irrelevant? Assuming that I'll accept it, and I just said I will.

MS. DOWELL: I think that may be a fair statement then, Your Honor. And I'm prepared to proceed as though whatever has been filed today is the operative complaint, that it is your order that you will accept it. I have not seen it yet so of course I can't comment how I would proceed.

THE COURT: Of course.

MS. DOWELL: I would like to ask the Court for 20 days to evaluate it and decide what we're going to do and file whatever responsive --

APPENDIX B
TRANSCRIPT OF PROCEEDINGS –
CONFERENCE CALL - Tuesday July 6th 1999, Los Angeles California 1.32 o'clock p.m

THE COURT Let me alert you to one other thing, which usually isn't relevant in the ordinary course and I don't think it's going to be, but I'm going to leave here on the 22ND and I will not be back until roughly the 7TH September, so you'll have plenty of time to think about what do do.

MS. BERNHARDT: Okay.

THE COURT: Okay?

MS. BERNHARDT: Okay.

MS. DOWELL: Well, that will be just fine, Your Honor. I appreciate that very much. Presumably we can't set any motion to be heard until after 7th of September.

THE COURT: I was going to make a joke, but—

MS. DOWELL: I'll take it as having been made. After September 7th is presumably acceptable to me and my client.

MR. GELLER: It's fine with me as well, Your Honor.

THE COURT: Then I'm glad. I think to the extent there was an interim of confusion, it undoubtedly stemmed from me. And if it did, I'm sorry, but I think we're straight now.

MS. BERHARDT: Yes.

THE COURT: Okay?

MS. BERHARDT: Yes: than you, Your Honor.

THE COURT: Then I think we can get off the phone unless somebody else has something to say.

MS. DOWELL: Let me be real sure I understand, Your Honor.

THE COURT: Yes.

MS. DOWELL: The proposed amended complaint filed today is to be considered the operative complaint.

APPENDIX B
TRANSCRIPT OF PROCEEDINGS –
CONFERENCE CALL - Tuesday July 6th 1999, Los Angeles California 1.32 o'clock p.m

THE COURT: Right.
MS. DOWELL: So at this point, whatever we've done in the past is now moot.
THE COURT: That's correct.
MS. DOWELL: Mr. Geller and I effectively have until 20 days before the first motion day after September 7th to get something on file –
THE COURT: Right.
MS. DOWELL: –either an answer or a motion to dismiss or some other responsive pleading, and then we will take it from there.
THE COURT: Yes. I think whether by luck or bad management or both, we are on a nice, clean position now and we can just go forward. Okay?
MS. BERHARDT: Great.
MS. DOWELL: Yes.
MS. BERHARDT: Thank you, Your Honor.
MR. GELLER: Thank you, Your Honor.

CERTIFICATE
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPTION, REPORTED TO THE BEST OF MY ABILITIES, OF THE PROCEEDING IN THE ABOVE ENTITLED MATTER.

TERRY KRAMER
CERTIFIED VERBATIM REPORTER

1-12-2000

APPENDIX B
Entered 7/1/ 1999
CIVIL MINUTES GENERAL
Case No CV-99-2598-JSL Date 6 /29/1999

United States District Court
Central District Of California
Bernhardt v Santa Monica College, et al.
PRESENT -- HON J. SPENCER LETTS
Nancy J. Webb Deputy Clerk.

Court reporter not present

ATTORNEYS NOT PRESENT FOR PLAINTIFFS
ATTORNEYS NOT PRESENT FOR DEFENDANTS

PROCEEDINGS: ORDER (In Chambers)
Entered 7/1/ 1999

ON THE COURT'S OWN MOTION, the motion for leave to file a supplemental complaint, the motion to amend complaint, the motion for leave for time to amend complaint presently set on the Court's calendar July 12th 1999 is taken off calendar

DENIED without a hearing..
DISTRICT DOCKET 38

ENTERED 1ST JULY 1999
ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE FOR TIME TO AMEND COMPLAINT
United States District Court
Central District Of California

APPENDIX B
ENTERED 1ST JULY 1999 ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE FOR TIME TO AMEND COMPLAINT
ANGELA BERNHARDT Plaintiff

v.

SANTA MONICA COLLEGE ET AL., Defendants
CV-99-2598-JSL

The motion of plaintiff ANGELA BERNHARDT, for leave for time to amend complaint was decided without a hearing on June 29th 1999. Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law.
IT IS HEREBY ORDERED that the motion of plaintiff for leave for time to amend complaint be DENIED.
IT IS SO ORDERED.
DATED JUNE 29TH 1999
J. Spencer Letts United States District Judge.

ENTERED ON 7/1/ 1999 DISTRICT DOCKET 37

ENTERED ON 7/1/ 1999
ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUPPLEMENTAL COMPLAINT

United States District Court
Central District Of California

ANGELA BERNHARDT Plaintiff

v.

SANTA MONICA COLLEGE ET AL., Defendants
CV-99-2598-JSL

APPENDIX B

ENTERED 1ST JULY 1999

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUPPLEMENTAL COMPLAINT

The motion of plaintiff ANGELA BERNHARDT, for leave for leave to file a supplemental complaint was decided without a hearing on June 29th 1999.

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law.

IT IS HEREBY ORDERED that the motion of plaintiff for leave for time to amend complaint be DENIED. IT IS SO ORDERED.

DATED JUNE 29TH 1999

J. Spencer Letts United States District Judge.

ENTERED ON 7/1/ 1999

DISTRICT DOCKET 36

[NOTE THE SUPPLEMENTAL COMPLAINT WAS FILED AS A SEPARATE CASE ON OCT 4TH 1999 CV-99-10121-JSL –MC AND IS NOW USCA #9th CASE 00-55524-CURRENTLY PENDING IN 9th-USCA - ORAL ARGUMENT HAS BEEN HEARD]

APPENDIX B
ENTERED 1ST JULY 1999
ORDER DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT
United States District Court Central District Of California

ANGELA BERNHARDT Plaintiff

v.

SANTA MONICA COLLEGE ET AL., Defendants

CV-99-2598-JSL

The motion of plaintiff ANGELA BERNHARDT, to amend her complaint was decided without hearing on June 29th 1999. Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law,
IT IS HEREBY ORDERED that the motion of plaintiff to amend her complaint be DENIED.
IT IS SO ORDERED

DATED 29TH JUNE 1999 J. Spencer Letts
United States District Judge.

ENTERED ON 7/1/ 1999 DISTRICT DOCKET 35

APPENDIX B
ENTERED 4TH JUNE 1999
ORDER DENYING PLAINTIFF'S APPLICATION AND REQUEST FOR AN ATTORNEY

United States District Court
Central District Of California

ANGELA BERNHARDT
Plaintiff
v.
SANTA MONICA COLLEGE ET AL.,
Defendants

CV-99-2598-JSL

The Application and Request for Attorney of Plaintiff, ANGELA BERNHARDT ,was decided without a hearing on June 2nd 1999.
Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law.

IT IS HEREBY ORDERED that Plaintiff's application and request be DENIED

IT IS SO ORDERED - DATED 2ND JUNE 1999
J. Spencer Letts United States District Judge.

ENTERED ON 6/4/ 1999
DISTRICT DOCKET 25

APPENDIX B
Entered 17th May 1999
CIVIL MINUTES GENERAL
Case No CV-99-2598-JSL
Date 5 /12/1999
United States District Court
Central District Of California

Bernhardt v Santa Monica College, et al.
PRESENT
HON J. SPENCER LETTS
Nancy J. Webb Deputy Clerk.

Court reporter not present

ATTORNEYS PRESENT FOR PLAINTIFFS: - Pro –Se

ATTORNEYS PRESENT FOR DEFENDANTS – Jonathan Geller, Mary L. Dowell

PROCEEDINGS: INFORMAL STATUS CONFERENCE (In Chambers)

Informal status conference held. The parties are to further discuss settlement and contact the Court within 2 weeks. The parties are also to submit a stipulation re motions and amended complaint.

Entered 17th May 1999

DISTRICT DOCKET 22

APPENDIX B
FILED MARCH 19TH 1999
ORDER TO REASSIGN CASE (MAGISTRATES JUDGE)
CASE NUMBER CV-99-2598-JSL (RNB)

PLAINTIFF(S) ANGELA BERNHARDT
V
DEFENDANT (S)SANTA MONICA COLLEGE, et al.

The undersigned Magistrate Judge to whom the above-entitled case was assigned pursuant to General Order 194, being of the opinion that he/she should not hear said case, by reason of recusal being warranted to avoid the appearance of impropriety, in that one of the named defendants (Judge Laurence D Rubin) is a former law firm colleague of mine with whom I have had more than a casual relationship, and this defendant's father is a former law firm partner of mine with whom I have had a close professional and personal relationship. Hereby orders the case reassigned by the clerk in accordance with General Order 224, and IT IS FURTHER ORDERED that the Clerk serve copies of this order forthwith by first class mail for all parties appearing in this case.

Dated March 17th 1999 RN Block.

[OMITTED]

FILED MARCH 19TH 1999

DISTRICT COURT DOCKET 3 OR ER-V1-APAGE 74.

APPENDIX B
ORDER VACATING REFERENCE TO MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CASE NUMBER CV-99-2598-JSL (SH)

PLAINTIFF(S)
ANGELA BERNHARDT

DEFENDANT (S)
SANTA MONICA COLLEGE, et al.

GOOD CAUSE APPEARING, IT IS ORDERED that the reference of the within matter to United States Magistrate Judge, Stephen Hillman pursuant to General Order 194 is hereby revoked, vacated and set aside. All further proceedings in this action shall be before the undersigned District Judge.

IT IS FURTHER ORDERED that the within matter shall not be randomly assigned to a magistrate judge for any discovery matters referred in the future.

DATED: 3/25/99 Spencer Letts United States District Judge

No.

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, & COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX C
FOR PETITION FOR A WRIT OF CERTIORARI

Angela Bernhardt
PO Box 480509
Los Angeles 90048
California.
Email – Angela_Bernhardt@yahoo.com
Tel (310) 281 3092

Petitioner – In Pro -Per

APPENDIX C
DATE OF ENTRY OF CALIFORNIA SMALL CLAIMS JUDGMENT - 6TH OCT 1998
SANTA MONICA CALIFORNIA - SMALL CLAIMS CASE NO. SM 98A01437 –FILED ON 09/02/98
(Document - California Small Claim -District Docket 1 – Exhibit K1 & K2 or United States Court Of Appeals for 9th Circuit Excerpt Of The Record Volume 1 Page 61 & Page 62)
SANTA MONICA JUDICIAL DISTRICT (19484)
ADDRESS - 1725, MAIN STREET, SANTA MONICA, CALIFORNIA

PLAINTIFF
BERNHARDT ANGELA
P.O. BOX 480509
LOS ANGELES CA 90048

DEFENDANT
MARABLE RON POLICE OFFICER
POLICE DEPARTMENT SANTA MONICA COLLEGE
1900 PICO BLVD SANTA MONICA CA 90605

DEFENDANT
SANTA MONICA COLLEGE
1900 PICO BLVD SANTA MONICA CA 90605

DEFENDANT
SANTA MONICA COMMUNITY COLLEGE DISTRICT
1900 PICO BLVD SANTA MONICA CA 90605

DEFENDANT
MARABLE RON
1900 PICO BLVD SANTA MONICA CA 90605

APPENDIX C
DATE OF ENTRY OF CALIFORNIA SMALL CLAIMS JUDGMENT 6TH OCT 1998
SMALL CLAIMS CASE NO. SM 98A01437 –
FILED ON 09/02/98
SANTA MONICA JUDICIAL DISTRICT (19484) ADDRESS - 1725, MAIN STREET, SANTA MONICA, CALIFORNIA

(Document - California Small Claim) (Complaint - District Docket 1 – Exhibit K1 & K2) or (United States Court Of Appeals for 9th Circuit Excerpt Of The Record Volume 1 Page 61 & Page 62.)

PLAINTIFF'S CLAIM

1. [X] A. Defendant owes me the sum of $5000.00 not including court costs, because (describe claim and date):

EMOTIONAL INJURY RESULTING FROM POLICE OFFICER RON MARABLE'S COVER UP OF MY REPORTING TEACHER LARRY JONES SEXUAL ASSAULT TO HIM, HIS COVER UP OF INTERROGATION OF ME, NEGLIGENCE, & DEFAMATION OF CHARACTER. DATE OF DISCOVERY - 03/17/98 1b [omitted]

2. [ ] This claim is against a government agency, and I filed a claim with the agency. My claim was denied by the agency, or the agency did not act on my claim before the legal deadline. *[See Form SC-150]*

APPENDIX C

DATE OF ENTRY OF CALIFORNIA SMALL CLAIMS JUDGMENT 6TH OCT 1998

SMALL CLAIM FILED ON 09/02/98

SMALL CLAIMS CASE NO. SM 98A01437 –SANTA MONICA JUDICIAL DISTRICT (19484)

3. [X] a) I have asked defendants to this money, but it has not been paid.

4. This court is the proper court for the trial because [B] SANTA MONICA COLLEGE POLICE DEPARTMENT

(Document - California Small Claim) (Complaint - District Docket 1 – Exhibit K1 & K2) or (United States Court Of Appeals for 9th Circuit Excerpt Of The Record Volume 1 Page 61 & Page 62.)

1718 PEARL STREET SANTA MONICA CA 90405

5. I have not filed more that one other small claim action anywhere in California during this calendar year in which the amount demanded is more than $2, 500.00cents.

6. I have not filed more than 12 claims in this court, including this claim during the previous 12 months.

7. I may talk to an attorney about this claim, but I cannot be represented by an attorney at the trial in the small Claims court.

b. I must appear at the time and place of trial and bring all witnesses books receipts and other papers or things to prove my case.

c. I have no right of appeal on my claim, but I may appeal a claim filed by the defendant in this case.

APPENDIX C
DATE OF ENTRY OF CALIFORNIA SMALL CLAIMS JUDGMENT 6TH OCT 1998
SMALL CLAIM FILED ON 09/02/98
SMALL CLAIMS CASE NO. SM 98A01437 –SANTA MONICA JUDICIAL DISTRICT (19484) 1725, MAIN STREET, SANTA MONICA, CALIFORNIA

(Document - California Small Claim) (Location Complaint - District Docket 1 – Exhibit K1 & K2) or (United States Court Of Appeals for 9th Circuit Excerpt Of The Record Volume 1 Page 61 & Page 62.)

d. If I cannot afford to pay the fees for filing or service by a sheriff, marshal, or constable, I may ask that the fees be waived.
8. I have received and read the sheet explaining some important rights of plaintiffs in the small claims court.

I declare under penalty of perjury, under the laws of the State Of California, that the foregoing is true and correct.

Date 09/02/98 PRINT PLAINTIFF'S NAME
ANGELA BERNHARDT

ORDER TO DEFENDANT
You must appear in this court on the trial date and time SHOWN BELOW. If you do not agree with the plaintiff's claim, burign all witnesses, books, receipts, and other papers or things with you to support your case.

HEARING DATE 10/6/98 TUESDAY 09.00 A.M. WEU

FILED ON (date): 09/02/98

APPENDIX C

DATE OF ENTRY OF CALIFORNIA SMALL CLAIMS JUDGMENT 6TH OCT 1998

SMALL CLAIM FILED ON 09/02/98

SMALL CLAIMS CASE NO. SM 98A01437 (OMITTED)

THE COUNTY PROVIDES SMALL CLAIMS ADVISORS SERVICES FREE OF CHARGE. READ THE INFORMATION ON THE REVERSE.

SC-100 (Rev. 1- 98) PLAINTIFF'S CLAIM AND ORDER TO DEFENDANT (Small Claims)

APPENDIX C

CALIFORNIA SMALL CLAIMS JUDGMENT ENTERED OCT 6TH 1998

SMALL CLAIMS CASE NO. SM 98A01437 –FILED ON 09/02/98

(Document - California Small Claims Judgment – Location Complaint - District Court Docket 1 Exhibit N1 & N2. & USCA 9th Circuit Excerpt Of The Record Volume 1 Page 67 & 68)

SMALL CLAIMS CASE NO: 98A01437

SANTA MONICA JUDICIAL DISTRICT (19484)

1725, MAIN STREET, SANTA MONICA, CALIFORNIA 90401

PLAINTIFF
BERNHARDT ANGELA
P.O. BOX 480509
LOS ANGELES CA 90048

APPENDIX C
CALIFORNIA SMALL CLAIMS JUDGMENT
ENTERED OCT 6TH 1998
SMALL CLAIM FILED 2ND SEPT 1998
SMALL CLAIMS CASE NO: 98A01437
SANTA MONICA JUDICIAL DISTRICT (19484)

DEFENDANT MARABLE RON
1900 PICO BLVD SANTA MONICA CA 90605

DEFENDANT MARABLE RON POLICE OFFICER
1900 PICO BLVD SANTA MONICA CA 90605

DEFENDANT
SANTA MONICA COLLEGE
1900 PICO BLVD SANTA MONICA CA 90605
DEFENDANT SANTA MONICA COMMUNITY COLLEGE DISTRICT 1900 PICO BLVD SANTA MONICA CA 90605

JUDGMENT WAS ENTERED AS STATED BELOW ON (DATE) 10/06/98

<u>Defendant does not owe plaintiff any money on plaintiff's claim.</u>

Clerk's certificate of mailing Santa Monica California on 10/06/98 By Lakeesha Lyles Deputy
The County provides small claims advisor's free of charge.
JUDGMENT & NOTICE OF ENTRY OF JUDGEMENT
[Small Claims Judgment attached to Complaint -District Court Docket 1 -Exhibit N1 & N2. & USCA 9th Circuit Excerpt Of The Record Volume 1 Page 67 & 68.]

No.

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, &
COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX D
FOR PETITION FOR A WRIT OF CERTIORARI

Angela Bernhardt
PO Box 480509
Los Angeles 90048
California.
Email – Angela_Bernhardt@yahoo.com
Tel (310) 281 3092

Petitioner – In Pro -Per

APPENDIX D

Date Of Letter November 3, 1997

Results Of Santa Monica College's Sexual Harassment And Unlawful Discrimination Investigation

[Location Of Document In the Record District Court Docket 14 Exhibit J] & [Ninth Circuit Excerpt Of The Record Volume 1 Page 101]

CONFIDENTIAL Santa Monica College

Ms. Angela Bernhardt

P.O. Box 480509 Los Angeles, California 90048

Dear Ms. Bernhardt

In accordance with paragraph 2B of Santa Monica Community College District's (SMCCD) Administrative Regulation 4112.2f, Unlawful Discrimination, Affirmative Action, Title IX and Sexual Harassment Complaint procedures for Job Applicants, Employees and Students, and investigation was conducted into your allegation of sexual harassment, dated June 16th 1997, by Mr. Larry Jones, and instructor within the Art department. The results of the investigation determined there was no violations of the District's policy against unlawful discrimination, to include sexual harassment and a one (1) time occurrence of an action, where the individual was put on notice about the incident, does not constitute harassment. A copy of the complete investigation is on file within the Human Resources Office.

The SMCCD is committed to an environment free of unlawful discriminatory and harassment practices and encourages its faculty, staff and students to report such occurrences in a timely fashion, or as soon as possible to appropriate District authority. Enclosed for your information, please find a copy of the SMCCD brochure on unlawful discrimination, and the California Department of Fair Employment and Housing's brochure on sexual harassment. Please contact me at 310 -452 9361 if you have questions or require additional information

APPENDIX – D

regarding this correspondence. Sincerely - Jo Ann R Fielder Assistant Dean, Equal Employment Opportunity Diversity

Santa Monica Community College District, 1900 Pico Blvd Santa Monica CA-90405-1628 (310) 450 5150 Piedad Robertson Superintendent and President

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Date Of Letter February 9, 1998

Santa Monica College Administrative Determination & Summary of Investigation into Allegations of Sexual Harassment – Angela Bernhardt

[Note: Location Of Exhibit in record - District Court Docket 14 Exhibit I1Ninth Circuit Excerpt Of The Record Volume 1 page 98]

Memorandum

HUMAN RESOURCES OFFICE

TO: Ms. Angela Bernhardt
Santa Monica College

FROM: Robert L. Sammis J.D.
Vice President, Human Resources

DATE: February 9, 1998

SUBJECT: Administrative Determination and Summary of Investigation into Allegations of Sexual Harassment – Angela Bernhardt

The attached documentation is a summary of the investigation report into the formal complaint of harassment submitted by you which you alleged harassment by Mr. Larry Jones, an instructor within the Art Department. This summary report is being provided

APPENDIX D

DATE OF LETTER 9TH FEB 1998

Santa Monica College Summary of the Investigation into allegations of Sexual Harassment Against Mr. [R] Larry Jones, Instructor, Art Department, by Ms. Angela Bernhardt, Student

to you in accordance with Section 2 D of Administrative Regulation 4112.2f of the Diversity/Affirmative Action Plan for Santa Monica Community College District dated 1995, copy at Attachment. It has been determined per the attached investigation summary that no action in violation of the District's policies and procedures regarding discrimination and harassment has occurred and the recommendations specified in the report will be implemented

You have the right to appeal to the District's governing Board and the Chancellor pursuant to California Code Of Regulations, Title V, Section 59338, within fifteen (15) days upon receipt of the determination, copy at attachment. This appeal must be submitted in writing. The Board will review the original complaint, the investigative report, the administrative determination and the appeal and issue a final decision within forty-five 45) days. A copy will be provided to you. If the Board does not act within the 45 day period, the administrative determination shall be deemed approved and shall become the final decision in the matter.

At any time during the District's process, you also have the right to file a complaint with the Department of Education, Office Of Civil Rights, in accordance with Title IX of the Education Amendments of 1972. The address and telephone number are as follows:

APPENDIX D
DATE OF LETTER 9TH FEBRUARY 1998
Santa Monica College Administrative Determination and Summary of Investigation into Allegations of Sexual Harassment – Angela Bernhardt

1. Ms Angela Bernhardt, a current student at Santa Monica College, made a statement in a May 28th, 1997 letter to Ms. Brenda Simmons, Associate Dean, Admissions and Records, regarding a possible disciplinary action involving a conflict with another student that she had been sexually harassed by Mr. Larry Jones, and instructor in the Art Department (See Attachment A). Her statement is quoted in part: " [R] Larry Jones also condones harassment of students, as I have been sexually harassed by him in his Photo 50 class."

II. Investigation Interviews and Summaries The following individuals were interviewed in conjunction wth this investigation.

a. Ms. Angela Bernhardt, student, Sept 17 & 19, 1997.
b. Mr. Larry Jones, Instructor, Art Department, September 29th 1997.
c. Dr. Dorothy Gelvin, Dean, Personnel, Sept 9th 1997
d. Mr. Daniel Cano, Dean, Admissions and Records, September 10th 1997

III Key Factual Findings Of The Investigation

a. Ms. Bernhardt did not file a complaint or inform District personnel of the alleged sexual harassment alluded to in her statement of May 28th 1997.

APPENDIX D
DATE OF LETTER 9TH FEBRUARY 1998
Santa Monica College Administrative Determination and Summary of Investigation into Allegations of Sexual Harassment – Angela Bernhardt

b. There were other students in the class during the alleged incident but Ms. Bernhardt was unaware that they observed or heard anything concerning the situation.

c. Mr. Jones categorically denies having any contact with Ms. Bernhardt or behaving in any way that could be construed as sexually harassing while she was a student in his class or otherwise.

e. There are no witnesses to the alleged incident.

IV. Conclusions

As a result of the investigation information provided it has been concluded that:

a There is no information or evidence to corroborate or substantiate the incident alleged by Ms. Bernhardt.

b. There is no evidence to infer that the District's policy of non-discrimination and harassment have been violated.

APPENDIX D
DATE OF LETTER 9TH FEBRUARY 1998
Santa Monica College Administrative Determination and Summary of Investigation into Allegations of Sexual Harassment – Angela Bernhardt

v. Recommendations

The goal of any investigation of possible violations of District Policies and procedures is to stop the negative action behavior and find a workable solution for the good of the individuals involved and the organization. The following recommendations are based upon the information obtained during the conduct of the investigation.

A. Ms. Bernhardt and Mr. Jones to be informed of the District's policy against discrimination and harassment and the options and reporting procedures available to staff and students when such incidents should occur.

B. Ms. Bernhardt and Mr. Jones to be provided copies of the information folder on sexual harassment from the State Department Of Fair Employment and Housing and the no discrimination and harassment folder distributed by the Santa Monica Community College District.

C. This investigation document remain active and be closed one (1) year following the document date with file retention to be not more than three (3) years.

[LOCATION OF DOCUMENT - District Docket 14 Exhibit I 2 & I 3 Ninth Circuit Excerpt From The Record Volume 1 Page 99 & 100]

APPENDIX D

Sheriff Leroy D Baca's Letter To Angela Bernhardt Regarding County Of Los Angeles Sheriff's Investigation Of Petitioner's Alleged Assault And Battery/Excessive Force And False Arrest Complaint Against The Caucasian Sheriffs.

Note: LOCATION OF EXHIBIT - District Court Docket 1 – Exhibit P1 P1 & (Ninth Circuit Excerpt Of Record V1 – Page 71)

County Of Los Angeles Sheriff's Department Headquarters 4700 Ramona Boulevard Monterey Park California 91754-2169 Leroy D Baca Sheriff

February 5th 1999

Ms. Angela Bernhardt

P.O. Box 480509 Los Angeles California 90048

Dear Ms. Bernhardt

On Dec 7th 1998, you filed a complaint regarding the actions of Sheriff's Department personnel who are assigned to Court Services West Bureau, Santa Monica Branch. In your complaint, you allege that on Oct 6th 1998, an unidentified Caucasian male bailiff at the Santa Monica Branch kicked your legs from underneath you and forced you to the floor of the courtroom. You further allege that the unidentified bailiff was then joined by two other Caucasian male deputies who struck your body with their fists approximately twenty times before they took you into custody. I instructed Court Services west bureau captain Irene McReynolds to investigate your complaint, since the personnel involved are assigned to her command. Captain

APPENDIX D

County Of Los Angeles Sheriff Leroy D Baca's Letter To Angela Bernhardt Regarding The County Of Los Angeles Sheriff's Investigation Of Alleged Assault And Battery Of Her, Excessive Force And False Arrest Complaint Against The County Of Los Angeles Sheriffs.

Sheriff's Letter is Attached To Original Complaint
[Note: LOCATION OF EXHIBIT - District Court Docket 1 – Exhibit P1 & [Ninth Circuit Excerpt Of Record V1 – Page 71]

McReynolds has completed her investigation and I have reviewed the results. Our investigation revealed that on Oct 6th 1998, you appeared before Judge Rubin in Department R of the Santa Monica Superior Court as the plaintiff in a Small Claims matter. After the judge rendered a decision that was not favorable to you, it became necessary for the bailiff, Deputy Terry January to stop you after you ignored his verbal instructions to halt your approach to the judge Our investigation also revealed that when Deputy January positioned himself in a manner that created a physical barrier between you and the judge, you tried to push your way past him. Your action created the need for Deputy January to physically restrain you. Your refusal to obey Deputy January's instructions, your physical efforts to circumvent his attempts to stop your advance and your physical resistance of his efforts to restrain you made it necessary for him to use the amount of force reasonably necessary to detain you.

A Tradition of Service

Page 2

Ms. Angela Bernhardt February 5th 1999

APPENDIX D

County Of Los Angeles Sheriff Leroy D Baca's Letter To Angela Bernhardt Regarding Sheriff's Investigation Of Her Alleged Assault And Battery -Excessive Force And False Arrest Complaint Against The County Of Los Angeles Sheriffs.

Note: Location oF Exhibit - Original Complaint - District Court Docket 1- Exhibit P2). (Ninth Circuit Excerpt Of Record V1 – Page 72)

Although our investigation revealed that you were taken to the ground by Deputy January during his effort to restrain you, there is no evidence to support your allegation that you were struck or punched during this incident. Finally, our investigation revealed no evidence to corroborate your allegation that three Caucasian male sheriffs deputies were involved in the effort to detain you. It should be noted that both Deputy January and the Santa Monica police officer who assisted Deputy January are of African – American descent. In essence, our investigation revealed no evidence to substantiate your allegation of misconduct against the Sheriff's personnel who detained you. In light of these factors, it appears that your complaint does not warrant further action at this time.

I appreciate your having brought this matter to my attention. Ensuring the proper performance of Sheriff's Department personnel is my top priority and I welcome the opportunity to evaluate their conduct.

The Sheriff's department is concerned about public confidence in its investigation of public complaints. ... [omitted] Sincerely, Lee Baca Leroy D Baca Sheriff [emphasis added]

No.

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, &
COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX E
FOR PETITION FOR A WRIT OF CERTIORARI

Angela Bernhardt
PO Box 480509
Los Angeles 90048
California.
Email – Angela_Bernhardt@yahoo.com
Tel (310) 281 3092

Petitioner – In Pro -Per

APPENDIX E

FILED 5th Oct, 2001

ORDER DENYING APPELLANT'S PETITION FOR PANEL REHEARING AND PETITION FOR REHEARING EN BANC

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ANGELA BERNHARDT,
Plaintiff-Appellant,
v.
SANTA MONICA COLLEGE, a public entity; et al.,
Defendants-Appellees.

Nos. 00-55996, 00-55530

PRIOR HISTORY -D.C. #. CV-99-2598-JSL.
J. Spencer Letts, District Judge, Presiding. :

Appeals from the United States District Court for the Central District of California.

Before: O'SCANNLAIN, SILVERMAN, and GOULD, Circuit Judges.

The panel has voted to deny appellant's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to hear the matter en banc. See Fed. R. App. P.35. The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings shall be accepted in this closed appeal.

No.

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, &
COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX G
FOR PETITION FOR A WRIT OF CERTIORARI

Angela Bernhardt
PO Box 480509
Los Angeles 90048
California.
Email – Angela_Bernhardt@yahoo.com
Tel (310) 281 3092

Petitioner – In Pro -Per

APPENDIX G

28 UNITED STATES CODE § 1738. STATE AND TERRITORIAL STATUTES AND JUDICIAL PROCEEDINGS; FULL FAITH AND CREDIT The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

42 U.S.C., § 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. {omitted]

APPENDIX G
42 UNITED STATES CODE § 1983 (2)
OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purposeof impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

42 U.S.C., § 1985(3) (3) DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any

APPENDIX G

42 U.S.C., § 1985(3) (cont) lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Title IX Of The Education Amendments Of 1972, 86 Stat. 373, As Amended, 20 U.S.C. 1681 Et Seq
(a) Prohibition against discrimination; exceptions
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance

42 Usc §. 2000d. Prohibition Against Exclusion From Participation In, Denial Of Benefits Of, And Discrimination Under Federally Assisted Programs On Ground Of Race, Color ,Or National Origin No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 718 Of The Education Amendments Of 1972, which authorized federal courts to award attorney's fees in private actions against public education agencies "explicitly presumes the availability of private suits to enforce Title VI in the education context

APPENDIX G

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964. SECTION 601 of that Title prohibits discrimination based on race, color, or national origin in covered programs and activities.

Section 602 authorizes federal agencies to effectuate 601 by issuing regulations, and the Department of Justice (DOJ) in an exercise of this authority promulgated a regulation forbidding funding recipients to utilize criteria or administrative methods having the effect of subjecting individuals to discrimination based on the prohibited grounds.

42 USC § SEC. 2000D-7. CIVIL RIGHTS REMEDIES EQUALIZATION

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of [omitted], title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), [omitted], title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph

(1), remedies (including remedies both at law and in equity) are available forsuch a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

APPENDIX G

42 USC § 1988. (b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 (20 U.S.C. 1681 et seq.), (OMITTED), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), or section13981 of this title,, (FOOTNOTE 1) the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

FOURTH AMENDMENT -Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX G - TORTS -DEFINITIONS

SEXUAL ASSAULT

Sexual contact.that is forced upon a person without consent or inflicted upon a person who is incapable of giving consent (as because of age or physical or mental incapacity) or who places the assailant (as a doctor) in a position of trust

SEXUAL BATTERY

Intentional and offensive sexual contact and esp. sexual intercourse with a person who has not given or (as in the case of a child) is incapable of giving consent Broadly: forced or coerced contact with the sexual parts of either the victim or the perpetrator

INDECENT ASSAULT

Intentional offensive sexual contact that does not amount to sexual intercourse or involve penetration and that is committed without consent of the victim and without the intent to commit rape

ASSAULT

Old French assaut, literally, attack, ultimately from Latin assultus, from assilire to leap (on), attack1: the crime or tort of threatening or attempting to inflict immediate offensive physical contact or bodily harm that one has the present ability to inflict and that puts the victim in fear of such harm or contact

BATTERY

Old French batterie beating, from battre to beat, from Latin battuere The crime or tort of intentionally or recklessly causing offensive physical contact or bodily harm (as by striking or by administering a poison or drug) that is not consented to by the victim

APPENDIX G - TORTS -DEFINITIONS

FALSE IMPRISONMENT

The tort of intentionally restraining another by physical force or the threat of physical force without privilege or authority

INFLICTION OF EMOTIONAL DISTRESS

The tort of intentionally or negligently causing emotional distress (called also infliction of mental distress)

EMOTIONAL DISTRESS

A highly unpleasant emotional reaction (as anguish, humiliation, or fury) which results from another's conduct and for which damages may be sought (called also emotional harm, mental anguish, mental distress, mental disturbance, mental suffering) (see also outrage zone of danger) Note: Damages may be recoverable for emotional distress that is caused intentionally or negligently. Recovery for negligent infliction of emotional distress often requires that the plaintiff suffer a physical injury as well.

FALSE ARREST

An arrest made without legal authority

DEFAMATION

1: communication to third parties of false statements about a person that injure the reputation of or deter others from associating with that person

APPENDIX G - TORTS DEFINITIONS

HOSTILE ENVIRONMENT HARASSMENT

Employment or [educational setting] discrimination consisting of unwelcome verbal or physical conduct (as comments, jokes, or acts) relating to the victim's constitutionally or statutorily protected classification (as race, religion, ethnic origin, or age) that has the effect of substantially interfering with a person's work performance or of creating a hostile work environment

HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Sexual harassment that has the effect of unreasonably interfering with a victim's work performance or creating an intimidating, hostile, or offensive [educational] or working environment that affects the victim's psychological well-being (called also hostile environment harassment)

SEXUAL HARASSMENT

Employment or [educational setting] discrimination consisting of unwelcome verbal or physical conduct directed at an employee or [student] because of his or her sex

MISREPRESENTATION

An intentionally or sometimes negligently false representation made verbally, by conduct, or sometimes by nondisclosure or concealment and often for the purpose of deceiving, defrauding, or causing another to rely on it detrimentally

APPENDIX G - TORTS DEFINITIONS

OBSTRUCTION OF JUSTICE
The crime or act of willfully interfering with the process of justice and law esp. by influencing, threatening, harming, or impeding a witness, potentialwitness, juror, or judicial or legal officer or by furnishing false information in or otherwise impeding an investigation or legal process

ABUSE OF PROCESS "Restatement (Second) of Torts § 682 'The essential elements of abuse of process, are - an ulterior purpose, and second, a wilful act in the use of process not proper in the regular conduct of the proceeding. . . . The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance of any formal use of the process itself, which constitutes the tort.' (. Prosser on Torts, (2d ed.) p. 667.)

DEFAULT JUDGMENT - DEFINITION
Restatement Of Judgments Second 27e "In the case of a judgment entered by by confession, consent or default, none of the issues is actually litigated.
Restatement Of Judgments 2nd # 27 comment e) Issues Not Actually Litigated If preclusive effect were given to issues not litigated, the result might serve to discourage compromise, ... and ... intensify litigation. In the case of a judgment entered by confession, consent or default, none of the issues are actually litigated. Therefore the rule of this Section # 27 does not apply with respect to any issue in a subsequent action.

APPENDIX G

DEFAULT JUDGMENT DEFINITION A judgment entered by a court after an entry of default against a party for failure to appear, to file a pleading, or to take other required procedural steps (called also judgment by default)

RESTATEMENTS OF JUDGMENTS SECOND # 20 JUDGMENT FOR DEFENDANT - EXCEPTIONS TO THE GENERAL RULE OF BAR

(1) A personal judgment for the defendant, although valid and final, does not bar another action by the plaintiff of the same claim when: (b) When...the court directs ...(..that the action be otherwise dismissed) without prejudice; or(c) When by statute or rule of court the judgment does not operate as a bar to another action on the same claim,

(2) A valid and final judgment for the defendant which rests...on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after...the precondition has been satisfied, unless a second action is precluded by operation of the substantive law.

Comment K Rational For Subsection (2) A determination by the court that the plaintiff has no enforceable claim because ...she has failed to satisfy a precondition to suit, is not a determination that she may not have an enforceable claim thereafter, and does not normally preclude her from maintaining an action when the claim has become enforceable. The rule stated in this subsection is applicable whether the fact ...that a precondition has not been satisfied appears on the face of the pleadings.

APPENDIX G -FEDERAL RULES OF CIVIL PROCEDURE

FRCP 4 d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(2) An individual, corporation, or association that is subject to service under subdivision (e) , (f) , or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, (omitted)

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84 , of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, [omitted] and(G) shall provide the defendant with an extra copy of

the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

FRCP 4(m) Time Limit for Service.

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

FRCP 8. General Rules of Pleading
8(e) Pleading to be Concise and Direct; Consistency

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable,

APPENDIX G -FEDERAL RULES OF CIVIL PROCEDURE

or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

FRCP 8 (f) Construction of Pleadings All pleadings shall be so construed as to do substantial justice.

FEDERAL RULE OF CIVIL PROCEDURE 11

FRCP 11 (b) Representations to Court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of

FRCP 11 (continued) the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

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(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

FRCP 11 (c) Sanctions.If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.
FRCP 11 (B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision *(b) and directing an* attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.
FRCP 11 (3) Order. When imposing sanctions, the court shall
describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

FEDERAL RULE OF CIVIL PROCEDURE 12 (B)
(b) How Presented.
Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive
APPENDIX G -FEDERAL RULES OF CIVIL PROCEDURE

pleading thereto if one is required, except that the following defenses may at the option
of the pleader be made by motion:
(1) lack of jurisdiction over the subject matter,

(2) lack of jurisdiction over the person,

(3) improper venue,

(4) insufficiency of process,

(5) insufficiency of service of process,

(6) failure to state a claim upon which
relief can be granted,

(7) failure to join a party under Rule 19 . A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in
law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the
motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 , and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion
by Rule 56 .
APPENDIX G -FEDERAL RULES OF CIVIL PROCEDURE

FRCP 12 (e) If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

FRCP 12(g) Consolidation of Defenses in Motion.
A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits there from any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

FRCP 12 (h) Waiver or Preservation of Certain Defense
(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

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(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19 , and an objection of failure to state a legal defense to a claim may be made in any

pleading permitted or ordered under Rule 7(a) , or by motion for judgment on the pleadings, or
at the trial on the merits.

Rule 15. Amended and Supplemental Pleadings
(a) Amendments.

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in
response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

FRCP 15 d) Supplemental Pleadings.
Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a

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claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Federal Rule Of Civil Procedure 16. Pretrial Conferences; Scheduling; Management
(a) Pretrial Conferences; Objectives.
In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial (omitted)

(b) Scheduling and Planning.
Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report
APPENDIX G- FEDERAL RULES OF CIVIL PROCEDURE 16 (cont) from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time
(1) to join other parties and to amend the pleadings;
(2) to file motions; and
(3) to complete discovery.
(omitted)
The order shall issue as soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge.

APPENDIX G
Local Rules District Court -Central District Of California
RULE 7. (7-7) MOTIONS AND EX PARTE APPLICATIONS

7.1 (7-7.1) APPLICABILITY - The provisions of this rule shall apply to motions, applications, petitions, orders to show cause, and all other proceedings except a trial on the merits (all such being included within the term "motion" as used herein) unless otherwise ordered by the Court or provided by statute, the
F.R.Civ.P., or the Local Rules.

7.3.2 (6-7.3.2) ENLARGEMENT OF TIME - The time within which any document or paper is required to be filed pursuant to this rule may be enlarged by order of Court before or after the expiration of the time provided unless contrary to statute or the F.R.Civ.P.

7.3.3 (6-7.3.3) SANCTIONS FOR LATE FILING - A party filing any document in support of, or in opposition to, any motion noticed for hearing as above provided after the time for filing the same shall have expired, shall be subject to the sanctions of Local Rule 27 and the F.R.Civ.P. Additionally, the Court may strike the filing of any such late document and disregard it for all purposes.

APPENDIX G - LOCAL RULES -DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

7.6 (7-7.6) OPPOSING PAPERS - Each opposing party shall, not later than ten (10) days after service of the motion in the instance of a new trial motion and not later than fourteen (14) days before the date designated for the hearing of the motion in all other instances, serve upon all other parties and file with the Clerk either (a) the evidence upon which the opposing party will rely in opposition to the motion and a brief but complete memorandum which shall contain a statement of all the reasons in opposition thereto and the points and authorities upon which the opposing party will rely, or (b) a written statement that he will not oppose the motion. Evidence presented in all opposing papers shall comply with the requirements of Local Rules 7.5.2, 7.5.3 and 7.5.4.

7.8 (7-7.8) CONTINUANCE OF HEARING DATE - Unless the order for continuance shall specify otherwise, the entry of an order continuing the hearing of a motion automatically extends the time for filing and serving opposing papers and reply papers to fourteen (14) days and seven (7) days, respectively, preceding the new hearing date. The stipulation shall provide the date the opposition and reply papers are due to be filedwith the court.

7.9 (7-7.9) FAILURE TO FILE REQUIRED PAPERS – Papers not timely filed by a party including any memoranda or other papers required to be filed under this rule will not be considered and may be deemed by the Court consent to the granting or denial of the motion, as the case may be.

APPENDIX G
CENTRAL DISTRICT OF CALIFORNIA U.S.D.C.-
LOCAL RULE 27A. (83-27A) VEXATIOUS LITIGANTS

27A.1 (83-27A.1) POLICY - It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of
defending against such litigation and appropriate

-DISTRICT COURT LOCAL RULES
CENTRAL DISTRICT OF CALIFORNIA U.S.D.C.-
LOCAL RULE 27A. (83-27A) orders to control such litigation. It is the intent of this rule to augment the inherent power of the Court to control vexatious litigation and nothing in this rule shall be construed to limit the Court's inherent power in that regard.

27A.2 (83-27A.2) ORDERS FOR SECURITY AND CONTROL – On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as are appropriate to control the conduct of a vexatious litigant. Such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require.

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27A.3 (83-27A.3) FINDINGS - Any order issued under Rule 27A.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

27A.4 (83-27A.4) REFERENCE TO STATE STATUTE – Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §§ 391 - 391.7.

Central District of California U.S.D.C.

CALIFORNIA CODE OF CIVIL PROCEDURE 415.30.

(a) A summons may be served by mail as provided in this section. A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.

(b) The notice specified in subdivision (a) shall be in substantially the following form: (Omitted)

APPENDIX G
CALIFORNIA CIVIL CODE OF CIVIL PROCEDURE
SECTION 116.210 -JURISDICTION OF THE SMALL CLAIMS COURT

116.210. In each municipal court and each superior court in a county in which there is no municipal court, there shall be a small claims division. The small claims division may be known as the small claims court.

116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars ($5,000).

(2) Except as provided in subdivisions (c), (e),and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars ($5,000), if the legality
of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars ($5,000).

4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars ($5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after non binding arbitration of a fee dispute involving no more than five thousand dollars ($5,000) in controversy, pursuant
to Article 13 (commencing with Section 6200) of Chapter 4 ofDivision 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission,restitution, reformation, and specific

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CALIFORNIA CIVIL CODE OF CIVIL PROCEDURE
SECTION 116.220 JURISDICTION OF CALIFORNIA
SMALL CLAIMS COURT

performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed (1) two thousand five hundred dollars ($2,500), or (2) on and after January 1, 2000, four thousand dollars ($4,000), if the defendant guarantor charges a fee for its guarantor or surety services or the defendant guarantor is the Registrar of the Contractors' State License Board.

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

(e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections facility or a Youth Authority facility, the small claims court shall have jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or determination of the plaintiff's administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

APPENDIX G -CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 116.220

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the **judicial officer shall**, at **his** or her **discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide such proof.**

(g) For purposes of this section, "department" includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 116.710. (a)

The plaintiff in a small claims action shall have no right to appeal the judgment on the plaintiff's claim but a plaintiff who did not appear at the hearing may file a motion to vacate the judgment in accordance with Section 116.720.

(b) The defendant with respect to the plaintiff's claim, and a plaintiff with respect to a claim of the defendant, may appeal the judgment to the superior court in the county in which the action was heard.

CALFORNIA GOVERNMENT CODE 911.2. A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after the accrual of the cause of action.

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CALIFORNIA GOVERNMENT CODE CLAIM REQUIREMENT California Government Code 911.3. (a) When a claim that is required by Section 911.2 to be presented not later than six months after accrual of the cause of action is presented after such time without the application provided in Section 911.4, the board or other person designated by it may, at any time within 45 days after the claim is presented, give written notice to the person presenting the claim that the claim was not filed timely and that it is being returned without further action. The notice shall be in substantially the following form: "The claim you presented to the (insert title of board or officer) on (indicate date) is being returned because it was not presented within six months after the event or occurrence as required by law.
- See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim. Your only recourse at this time is to apply without delay to (name of public entity) for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, & Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, do so immediately."

California Government Code 911.3. (b) Any defense as to the time limit for presenting a claim described in subdivision (a) is waived by failure to give the notice set forth in subdivision (a) within 45 days after the claim is presented, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

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CALIFORNIA GOVERNMENT CODE CLAIM REQUIREMENT

California Government Code 911.4. (a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim.California Government Code 911.4 (b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.911.6. (a) The board shall grant or deny the application within 45 days after it is presented to the board. The claimant and the board may extend the period within which the board is required to act on the application by written agreement made before the expiration of the period. (b) The board shall grant the application where one or more of the following is applicable:(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2.

APPENDIX G
Article. IV. Section 1. . Interstate Relations and the Official Acts of States

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Article. IV. Section 2. Clause 1 Interstate Relations and The Rights of Citizens

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States

The Constitution of the United States of America
Article. VI. . Clause 2 General Provisions: The Supreme Law

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary not withstanding.